

OCT 20 2006

**THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:

Mehari Woldemariam

t/a Green Island Café/Heaven  
& Hell

Holder of a Retailer's License

Class "CR" at premises

2327 18<sup>th</sup> Street, N.W.

Washington, D.C.

Respondent

Case No. 23016-03/017C

Order No. 2005-67

BEFORE:

Charles A. Burger, Chairperson

Vera M. Abbott, Member

Audrey E. Thompson, Member<sup>1</sup>

Judy A. Moy, Member

Peter B. Feather, Member<sup>1</sup>

Albert G. Lauber<sup>1</sup>

Eartha Isaac<sup>1</sup>

ALSO PRESENT:

Andrew Kline, Esquire, on behalf of the Respondent

Brenda Walls, Esquire, Chief, Civil Enforcement Section,  
Public Safety Division, Office of the Attorney General,  
on behalf of the District of Columbia

Fred P. Moosally, III, General Counsel  
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

On April 16, 2003, the Alcoholic Beverage Control Board ("Board"), pursuant to D.C. Official Code § 25-823 (2001) and Title 23 of the District of Columbia Municipal Regulations

<sup>1</sup> ABC Board member Audrey E. Thompson did not participate in all of the proceedings. As a result, Ms. Thompson did not vote in this matter. ABC Board members Peter B. Feather, Albert G. Lauber, and Eartha Isaac were not Board members when these proceedings were initiated and did not participate or vote on this matter. Pursuant to D.C. Official Code § 25-431(b) (2001), three (3) members of the Board constitute a quorum.

("DCMR") § 1502.1 (1997)<sup>2</sup>, scheduled a show cause hearing for June 25, 2003 on the Retailer's License Class "CR" held by Mehari Woldemariam, t/a Green Island Café/Heaven & Hell ("Respondent"), based upon an investigation conducted by then Alcoholic Beverage Regulation Administration ("ABRA") Investigator Lloyd Logan as a result of a complaint that was received. The complaint was received on January 8, 2003 regarding the Respondent's compliance with its voluntary agreement, dated January 16, 2001, the use of the establishment's summer garden, and excessive noise emanating from the establishment. The grounds for the show cause hearing are set forth in the Notice to Show Cause, dated April 16, 2003, which was served upon the Respondent.

The case came before the Board for show cause proceedings held on June 25, 2003 and July 2, 2003 based upon the six (6) charges set forth in the April 16, 2003 Notice to Show Cause, as described below. At the conclusion of the July 2, 2003 show cause hearing, the Board took its decision in this matter under advisement.

The Board considered the evidence addressed at the hearings, the testimony of the witnesses, the arguments of counsel, exhibits admitted in the hearings, and the documents comprising the Board's official file in making the following:

### FINDINGS OF FACT

1. The establishment is owned by Mehari Woldemariam. (ABRA Application File No. 23016.) The establishment holds a Retailer's License Class "CR" and is located at 2327 18<sup>th</sup> Street, N.W., in the C-2-B zone district. (ABRA Application File No. 23016; Tr. 6/25/03 at 13.) The Respondent has a voluntary agreement, dated January 16, 2001, with Advisory Neighborhood Commission ("ANC") 1C, and the Kalorama Citizens Association ("KCA").<sup>3</sup> (ABRA Application File No. 23016.)
2. The Board issued the Notice to Show Cause, dated April 16, 2003, to the Respondent, based upon an investigation conducted by then ABRA Investigator Lloyd Logan as a result of a complaint that was received. (See Show Cause Case File No. 23016-03/017C.) The April 16, 2003 Notice to Show Cause charges the Respondent with: (1) failing to superintend in person, or through a manager approved by the Board, the business for which the license was issued, in violation of D.C. Official Code § 25-823(3) (2001); (2) making substantial changes in the operation of the licensed establishment without applying to and obtaining approval by the Board, in violation of D.C. Official Code § 25-404(a) (2001); (3) producing or causing to be produced loud noise and music of such intensity that it could be heard outside of the licensed establishment, in violation of D.C. Official Code § 25-725(a)(1) (2001); (4) failing to maintain and ensure that the immediate environ of the licensed establishment is free of trash, garbage, and other litter, in violation of D.C. Official Code § 25-726(a) (2001); (5) failing to comply with the

<sup>2</sup> The ABC Board adopted a new version of 23 DCMR as published in the D.C. Register at 51 DCR 4309 (April 30, 2004). The Board's show cause authority can now be found at 23 DCMR § 1604.1 (2004) as well as D.C. Official Code § 25-447 (2001).

<sup>3</sup> On April 6, 2005, the Board issued an Order approving a more recent voluntary agreement, dated February 2, 2005, between the Respondent, the KCA, The Lofts at Adams Morgan Association, and a group of five (5) or more individuals.

terms of the voluntary agreement, dated January 16, 2001, specifically the noise control provisions in paragraph three (3), in violation of D.C. Official Code § 25-445(e) (2001); and, (6) failing to comply with the terms of the voluntary agreement, dated January 16, 2001, specifically the trash and garbage provisions in paragraph four (4), in violation of D.C. Official Code § 25-445(e) (2001). (See Show Cause Case File No. 23016-03/017C.)

3. At the time relevant to these proceedings, Lloyd Logan was employed by ABRA as an Investigator and was assigned to monitor ABC establishments in Ward 1. (Tr. 6/25/03 at 12-13.) Investigator Logan described the Respondent's establishment as having three (3) floors and a summer garden in the rear of the establishment, including the basement level which is known as "Hell", the ground floor which is known as "Green Island Cafe", and the second floor which is known as "Heaven". (Tr. 6/25/03 at 13-14.)

4. Investigator Logan visited the Respondent's establishment on Sunday, October 13, 2002, between the hours of 9:00 p.m. and 10:00 p.m., based upon a complaint received by ABRA's Enforcement Division regarding whether the Respondent's placards were posted correctly. (Tr. 6/25/03 at 14.) Investigator Logan determined that on October 13, 2002, the establishment was open and operating and that there were patrons on every floor of the establishment consuming alcoholic beverages. (Tr. 6/25/03 at 17-18.) During his visit on October 13, 2002, Investigator Logan did not see the Respondent's ABC licensed manager or the owner of the establishment on the premises. (Tr. 6/25/03 at 16-17.) Investigator Logan spoke with Mrs. Woldemariam regarding the absence of an ABC licensed manager or owner on the premises and Mrs. Woldemariam responded that she was the owner of the establishment and part of the corporation, and that in lieu of the ABC licensed manager being present, she was the responsible person at the premises. (Tr. 6/25/03 at 17.) However, Investigator Logan's investigation revealed that the establishment's ABC license is owned by Mr. Woldemariam as a sole proprietor and that his wife is not listed as an owner on the ABC license. (Tr. 6/25/03 at 17-19.) Investigator Logan noted that the establishment has an ABC licensed manager who was not present on October 13, 2002. (Tr. 6/25/03 at 15.)

5. Investigator Logan testified that the Respondent did not file a separate substantial change application with the ABC Board for use of the summer garden or to expand the operation of the establishment to the rooftop. (Tr. 6/25/03 at 19-20, 22, 90, 95.) Investigator Logan checked with ABRA Licensing Specialist Diane Jackson who confirmed the fact that the Respondent did not file a substantial change application with the ABC Board. (Tr. 6/25/03 at 20.) Investigator Logan informed Mr. Woldemariam that he did not locate any record of Mr. Woldemariam submitting a substantial change application to the Board. (Tr. 6/25/03 at 21.)

6. Investigator Logan described the Respondent's summer garden as an enclosed deck located to the rear of the second floor and running adjacent to the lofts on Champlain Street, N.W. (Government's Exhibit 2A; Tr. 6/25/03 at 19.) Investigator Logan stated that there is a doorway which connects the interior of the establishment to the exterior deck area. (Tr. 6/25/03 at 65.) Investigator Logan observed patrons using the bar area near the doorway entrance to the summer garden and he heard noise coming from the summer garden area while standing in the alley to the rear of the establishment. (Tr. 6/25/03 at 19, 59-60, 64-65.) Investigator Logan did not observe patrons using the summer garden. (Tr. 6/25/03 at 65.) Investigator Logan stated that the

Respondent's summer garden was not insulated to soundproof any noise that would emanate from that area into the alley. (Government's Exhibit 2A; Tr. 6/25/03 at 51.)

7. Investigator Logan read from the narrative section of the Inspection Report for New and Transferred Premises ("IR") form, dated November 9, 1984, contained in the Respondent's ABRA Application File, which stated that "[the applicant intends] to have a summer garden, second floor rear patio in the next year." (ABRA Application File No. 23016; Tr. 6/25/03 at 74-78, 90.) Investigator Logan testified that he reviewed the Respondent's application file but that he had never seen the November 9, 1984 IR form before. (Tr. 6/25/03 at 72, 78.)

8. Investigator Logan stated that in 1991 the Respondent filed a Renewal Application, dated December 11, 1991, and did not indicate on the application that a summer garden existed. (Government's Exhibit No. 4; Tr. 7/2/03 at 8, 12-13.) In 1995, the Respondent filed a substantial change application with the ABC Board for the second floor of the establishment. (Tr. 7/2/03 at 8.) Investigator Logan noted that the ABC Board approved the substantial change but the establishment's new Certificate of Occupancy did not include a summer garden. (Tr. 7/2/03 at 8.)

9. Investigator Logan visited the Respondent's establishment on November 2, 2002 and spoke with the doorman who indicated that the "rooftop", i.e., summer garden, was not being used due to cold weather. (Tr. 6/25/03 at 23, 66.)

10. Investigator Logan and officials from the Department of Consumer and Regulatory Affairs ("DCRA") visited the establishment on Saturday, November 16, 2002, after 9:00 p.m., to conduct a sound check as a result of noise complaints from some neighbors. (Tr. 6/25/03 at 23-24.) Investigator Logan noticed that the establishment's doors were open and that the music playing in the basement of the establishment was very loud and could be heard on the sidewalk. (Tr. 6/25/03 at 24-25, 91, 93.) Investigator Logan confirmed that the music he heard from the sidewalk was coming from the Respondent's establishment and not a neighboring establishment because the type of music being played was distinct to the Respondent's establishment. (Tr. 6/25/03 at 25-26.) Investigator Logan recalled asking the bartender to close the doors of the establishment because the Respondent was in violation of the noise regulations, in addition to the Respondent's voluntary agreement which states that the doors and windows of the establishment are to remain closed. (Tr. 6/25/03 at 25-27, 88.) Investigator Logan indicated that the establishment's bartender complied immediately with his request to close the doors. (Tr. 6/25/03 at 88.)

11. Investigator Logan visited the establishment on Thursday, January 16, 2003 and observed that the noise level inside of the establishment was high. (Tr. 6/25/03 at 27-28.) Investigator Logan asked an employee of the establishment to turn down the music and the employee complied. (Tr. 6/25/03 at 28.) Investigator Logan also observed the Respondent's ABC licensed manager standing outside the establishment yelling "Heaven & Hell" and beer prices. (Tr. 6/25/03 at 28.) Investigator Logan informed the manager that his yelling was illegal and asked the manager to refrain from yelling and the manager complied. (Tr. 6/25/03 at 29.) Investigator Logan could hear the manager's "barking" and the music inside of the establishment while standing across the street on the opposite sidewalk. (Tr. 6/25/03 at 30.)

12. Investigator Logan visited the establishment on Saturday, January 18, 2003, with two (2) members of DCRA's Neighborhood Stabilization Program to monitor the establishment's noise ambient reading based upon noise complaints from the neighbors. (Tr. 6/25/03 at 30-31.) Neighborhood Stabilization Inspector Mendoza Lowery took about twelve (12) noise ambient readings that same evening. (Tr. 6/25/03 at 33, 44.) Investigator Logan noted that the District of Columbia Municipal Regulations provide that noise levels should not exceed sixty (60) decibels. (Tr. 6/25/03 at 34, 43.) Investigator Logan testified that the noise reading for the Respondent's establishment was seventy-five point three decibels (75.3dB). (Tr. 6/25/03 at 43, 86.) Investigator Logan recalled that on January 18, 2003, Columbia Station, an ABC establishment located directly next to the Respondent's establishment at 2325 18<sup>th</sup> Street, N.W., was issued a five-hundred dollar (\$500.00) citation by Inspector Lowery as a result of a noise reading that was taken that evening. (Tr. 6/25/03 at 43-44, 79-80, 83.) Investigator Logan testified that although the citation was issued to Columbia Station, Inspector Lowery could not distinguish between the noise that was coming from Columbia Station and the noise that was coming from the Respondent's establishment. (Tr. 6/25/03 at 81-82.) Specifically, at the time the noise reading was taken, there were other neighboring establishments in operation besides the Respondent's establishment and Columbia Station, and he could also hear music emanating from these other establishments. (Tr. 6/25/03 at 84.)

13. Investigator Logan visited the establishment on January 11, 2003 and January 12, 2003 to ascertain if the Respondent was in compliance with its voluntary agreement, dated January 16, 2001. (Tr. 6/25/03 at 44-45, 55.) The Respondent was not in compliance with section three (3) of the voluntary agreement which states that the Respondent must install an additional layer of plexiglas in the windows that face the front of the building to absorb the sound. (Tr. 6/25/03 at 45-46.) Investigator Logan photographed the windows of the Respondent's establishment on January 12, 2003 and found that only two (2) windows contained an additional layer of plexiglas as required by the Respondent's voluntary agreement. (Government's Exhibit Nos. 2B, 2C; Tr. 6/25/03 at 45-46, 51-55.)

14. Investigator Logan also found that the Respondent was in violation of section four (4) of the agreement which deals with trash, garbage, and rodents because on January 11, 2003 and January 12, 2003, he observed that the dumpsters in the rear of the establishment were not closed and that the trash was overflowing. (See Show Cause Case File No. 23016-03/017C; Tr. 6/25/03 at 46, 93.) Investigator Logan stated that the dumpsters belonged to the Respondent because they were positioned directly outside of the Respondent's kitchen exit and he observed members of the establishment's kitchen staff dumping trash into these same dumpsters. (Tr. 6/25/03 at 47.) Investigator Logan spoke with Mr. Woldemariam regarding his compliance with the voluntary agreement and Mr. Woldemariam informed Investigator Logan that he would make sure that his kitchen staff kept the dumpsters closed and that he was in process of installing the plexiglas and soundproofing the second floor of the establishment. (Tr. 6/25/03 at 48, 54.) Investigator Logan indicated that as of January 18, 2003 only two (2) windows in the Respondent's establishment contained an additional layer of plexiglas. (Tr. 6/25/03 at 55.)

15. Neal Scott Keller is employed as a sound engineer and manager at the Respondent's establishment and has been employed by the establishment since 1993. (Tr. 7/02/03 at 25, 32,

42, 62.) Mr. Keller has an ABC Manager's License. (Tr. 7/02/03 at 75.) He stated that the establishment plays popular dance music and that the neighboring ABC establishments in the area play similar dance music. (Tr. 7/02/03 at 51-52.) Mr. Keller completed a two-year accredited course in sound engineering at Omega Recording Studios in Rockville, Maryland in 1992. (Tr. 7/02/03 at 26-30.) He currently works part time as an instructor at Omega Recording Studios where he teaches a course in live sound performance. (Tr. 7/02/03 at 26.) Mr. Keller is a qualified expert in the fundamentals of sound, including the operation of sound level meters. (Tr. 7/02/03 at 27, 32.)

16. Mr. Keller stated that sound levels are measured in decibels with a calibrated SPL meter positioned at a designated distance away from a sound source. (Tr. 7/02/03 at 32.) He indicated that the meter must be set with the proper scale and then the meter reading is added or subtracted from that scale to get the sound level measurement. (Tr. 7/02/03 at 32-33.) Mr. Keller testified that a sound level meter cannot distinguish between multiple sources of sound to determine which source it is measuring because the microphone on the device is omni-directional. (Tr. 7/02/03 at 33-34.) He noted that if a sound meter reading was taken outside of the Respondent's establishment while there was noise audible from neighboring establishments, there would be no way to determine whether the sound reading came solely from the Respondent's establishment. (Tr. 7/02/03 at 33, 53.) Mr. Keller believed that the sound level meter used by the Respondent's establishment complies with District law because it has an A-weighted scale and it has never given an inaccurate reading. (Tr. 7/02/03 at 54-55.) The establishment's sound level meter is calibrated on a bi-weekly basis. (Tr. 7/02/03 at 55.) Mr. Keller testified that the sound levels from the Respondent's establishment did not exceed District law, but that he is not familiar with Section 905 of 23 DCMR. (Tr. 7/02/03 at 50-51.)

17. The Respondent made structural modifications to the establishment in January or February of 2003, including filling in windows and other openings with bricks; building additional walls and installing a double door system on the second floor; placing carpet and other sound absorbent materials inside the establishment; and, insulating hollow areas within the building in an attempt to minimize sound leakage from the establishment. (Tr. 7/02/03 at 34-37, 48, 73-74.) The most powerful speaker in the establishment was removed and the main speaker system was replaced with a new, more compact, directional speaker system that focuses the sound so that it does not leave the building. (Tr. 7/02/03 at 36, 74.) The Respondent installed a limiter compressor that sets a maximum volume on the sound system and electronically reduces any gain beyond that threshold point. (Tr. 7/02/03 at 38, 74-75.) Mr. Keller stated that the maximum sound level was set when the establishment was empty and there was the least potential for sound absorbency. (Tr. 7/02/03 at 40-41.) The limiter compressor is locked up in a closet and that Mr. Woldemariam is the only person with a key to the closet. (Tr. 7/02/03 at 38-39, 74-75.) As an additional protection, the limiter compressor is also enclosed behind a security grate so there is no access to the knobs on the device. (Tr. 7/02/03 at 39.)

18. Mr. Keller indicated that while making these modifications, the sound levels outside of the establishment, including the deck area and the rooftop, were checked regularly by staff using both their ears and a sound level meter. (Tr. 7/02/03 at 37-38, 41-42.) The sound levels are checked on Thursday, Friday, and Saturday nights. (Tr. 7/02/03 at 59.) Mr. Keller stated that when the sound levels were checked by staff, without the use of a sound level meter, it was very

difficult to hear any sound coming from inside the establishment, unless a person was standing directly on the roof over the air conditioning unit, and even then it was difficult to discern the establishment's music noise from the traffic and street noises outside. (Tr. 7/02/03 at 42, 52.) He also indicated that the sound inside of the establishment was inaudible from the patio area and that this fact was verified by the sound level meter. (Tr. 7/02/03 at 42.)

19. Mr. Keller stated that as of November 16, 2002, all of the modifications to the Respondent's establishment had not been made. (Tr. 7/02/03 at 48.) He did not recall when the plexiglas was installed on the windows of the establishment. (Tr. 7/02/03 at 49.)

20. Mr. Keller testified that he and the staff always respond immediately to remedy noise complaints. (Tr. 7/02/03 at 45-46.) He indicated that he regularly adjusts the sound levels of the establishment's speaker system. (Tr. 7/02/03 at 50.) Mr. Keller testified that the Metropolitan Police Department ("MPD") has never had to return to the establishment after the staff has responded to a noise complaint. (Tr. 7/02/03 at 57-58.) He recalled an incident where a noise complaint was called into MPD regarding live band music coming from the Respondent's establishment and it was later discovered that the music was actually coming from a neighboring ABC establishment down the street called Felix. (Tr. 7/02/03 at 46-47.) Mr. Keller recalled another incident when noise complaints were made about the Respondent's establishment on a night when the establishment was closed due to a power outage. (Tr. 7/02/03 at 47.)

21. Mr. Keller was working at the establishment overseeing the sound system on Thursday, January 16, 2003. (Tr. 7/02/03 at 51.) He was not present at the establishment on Sunday, October 13, 2002. (Tr. 7/02/03 at 76.) Mr. Keller stated that Club Heaven is not open on Sundays. (Tr. 7/02/03 at 76.)

22. Mr. Keller noted that the outdoor deck area on the second floor of the establishment has been operational since 1988 when he was a musical performer at the Respondent's establishment. (Tr. 7/02/03 at 43-44, 61.)

23. Jerry Migunes has been employed as a bartender at the Respondent's establishment for ten (10) years. (Tr. 7/02/03 at 78.) He indicated that the deck area of the establishment has been in operation for the entire duration of his employment with the Respondent but that he is unsure if that area was in operation prior to 1992. (Tr. 7/02/03 at 79-80.) Mr. Migunes noted that the summer garden has always had tables and chairs. (Tr. 7/02/03 at 81.) He stated that there is no music played in the summer garden area and that the summer garden has never had its own sound system. (Tr. 7/02/03 at 81.) Mr. Migunes did not recall whether or not he was working at the establishment on November 16, 2002. (Tr. 7/02/03 at 82.)

24. Steve Donahoe has been employed as a promoter for the Respondent's establishment since 1996. (Tr. 7/02/03 at 84.) The rear deck area on the top level of the establishment has been in operation since he began working there. (Tr. 7/02/03 at 85, 88.) Mr. Donahoe described the rear deck as being approximately sixteen feet (16ft.) long, with a six foot (6ft.) high fence along the outer edge of the deck, and an insulated brick wall separating the deck area from the outer edge of the building where the double doors are located. (Tr. 7/02/03 at 112-116.) The insulated brick wall had windows which were enclosed with brick around December of 2002 or January of

2003. (Tr. 7/02/03 at 117.) Mr. Donahoe stated that there are tables, chairs, and benches on the rear deck and that no music is played there. (Tr. 7/02/03 at 85, 114.) He indicated that the double door on the second floor of the establishment consists of a steel door which leads to the rear deck and an interior door with weather stripping which leads to the inside of the establishment. (Tr. 7/02/03 at 100-101, 103, 105.)

25. Mr. Donahoe has used the establishment's sound level meter to detect noise outside of the establishment. (Tr. 7/02/03 at 87, 91.) He has never heard sound emanating from inside the establishment while standing in the back area, but noted that a person can hear sound coming from the inside of the establishment if they stand right on the edge of the steps in front of the establishment. (Tr. 7/02/03 at 92.) Mr. Donahoe stated that the rear deck has not been open since the summer. (Tr. 7/02/03 at 103.) On weekends a security guard stands near the rear double doors and makes sure that no patrons go in between the doors. (Tr. 7/02/03 at 104.) On Wednesday nights he usually goes out to the rear deck area and closes both doors to ensure no sound is escaping. (Tr. 7/02/03 at 86-87, 91, 99.) Mr. Donahoe has been given specific instructions by Mr. Woldemariam to make sure that the windows and doors of the establishment are closed. (Tr. 7/02/03 at 94-95, 106-107.)

26. Mehari Woldemariam has been the owner of the establishment for approximately twenty (20) years. (Tr. 7/02/03 at 118-119.) He described the establishment as having three (3) floors, including the basement level called "Hell", the first floor called "Green Island Café", and the second floor called "Heaven and Hell" or "Heaven". (Tr. 7/02/03 at 147.)

27. Mr. Woldemariam testified that when he first applied for the Retailer's Class "CR" License in 1983, he sought permission from the Board to be able to use the rear deck area of the establishment and that in 1985 he received approval from the Board for use of the rear deck area after the establishment was inspected by ABRA and the Department of Health. (Tr. 7/02/03 at 119-120, 124, 170.) He first began using the rear deck around 1984 or 1985 and has continuously used the area since that time. (Tr. 7/02/03 at 120-121.) Mr. Woldemariam stopped using the rear deck area around November or December of 2002 after receiving numerous complaints about noise from tenants in a nearby building. (Tr. 7/02/03 at 121.) He believed that he has had Board approval for use of the establishment's summer garden since 1984. (Tr. 7/02/03 at 122, 124.) Mr. Woldemariam stated that he has only recently learned of the term "summer garden". (Tr. 7/02/03 at 123.)

28. Mr. Woldemariam stated that in 1996 he expanded the second floor of the establishment with Board approval and that the establishment's seating capacity increased to two-hundred and forty-eight (248) persons. (Tr. 7/02/03 at 139-140, 157, 182, 188.) He testified that in 1996 he submitted to ABRA staff, as supporting documentation to the substantial change application, drawings depicting the construction plans for the second floor of the establishment, which included a picture of the existing rear deck area. (Tr. 7/02/03 at 142-145, 158, 188.) Mr. Woldemariam indicated that a building permit was issued for the construction and that the work was completed in accordance with the plans depicted in the drawings. (Tr. 7/02/03 at 146.)

29. Mr. Woldemariam has made about twenty-six thousand dollars (\$26,000.00) in changes to the establishment to make it more soundproof, including replacing the establishment's larger



speakers with smaller ones, and reducing the sound system's equalizer. (Tr. 7/02/03 at 124, 168.) He made these changes about six (6) months ago. (Tr. 7/02/03 at 168-169.) Mr. Woldemariam is involved in setting the volume limit on the limiter compressor and he uses the daytime limit of sixty-four decibels (64dB) and the nighttime limit of sixty decibels (60dB), as well as his own personal judgment, to guide how the limiter compressor is set. (Tr. 7/02/03 at 125-126.)

30. Mr. Woldemariam's voluntary agreement requires him to install plexiglas over the establishment's windows and when he signed the agreement in 2001 he covered all of the windows on the second floor of the establishment with plexiglas. (Tr. 7/02/03 at 130, 163-164, 167.) He removed the plexiglas from some of the windows because a District of Columbia Fire Inspector came to the establishment over a year ago and told him to remove the plexiglas because it was a fire code violation for the windows to be covered by plexiglas. (Tr. 7/02/03 at 131-132, 163-164, 166, 176, 190.) Mr. Woldemariam admitted that he did not inform the other signatories to the voluntary agreement that he removed the plexiglas from some of the windows. (Tr. 7/02/03 at 190.)

31. Mr. Woldemariam recalled a visit from Mr. Logan on November 16, 2002, where Mr. Logan informed him that there was loud music coming from the inside of the establishment and he recalled taking Mr. Logan onto the patio area to assure him that loud music could not be heard. (Tr. 7/02/03 at 161-162.) He testified that the doors and windows of the establishment remain closed at all times. (Tr. 7/02/03 at 152, 191.)

32. Mr. Woldemariam admitted that he does not recall which of his staff members were working on any particular night. (Tr. 7/02/03 at 129-130.) He indicated that the basement and second floor of the establishment are not usually open on Sundays unless there is a special event such as Memorial Day or President's Day. (Tr. 7/02/03 at 147-148.) Mr. Woldemariam testified that the basement of the establishment was not open on Sunday, October 13, 2002, because the establishment would have advertised that night as a special event and the earliest advertisement he had on file was for an event on Thursday, October 17, 2002. (Respondent's Exhibit No. 2; Tr. 7/02/03 at 150-152, 159, 182.) He admitted that on October 13, 2002, the first floor of the establishment was open from 5:00 p.m. to 11:00 p.m. and serving alcoholic beverages. (Tr. 7/02/03 at 159.) Mr. Woldemariam could not recall with certainty whether he was at the establishment on October 13, 2002. (Tr. 7/02/03 at 160.)

33. Mr. Woldemariam admitted that his dumpsters were overflowing on January 12, 2003. (Tr. 7/02/03 at 163, 170.) He stated that he recently began using a company called East Management for his trash removal service and that he previously used a company called Waste Management. (Tr. 7/02/03 at 153-154, 178.) Mr. Woldemariam changed his trash removal service company about one month ago after he became aware that his former trash removal service company was not doing a good job. (Tr. 7/02/03 at 162-163, 169, 178-179.) He has added more days for trash pick up, so now trash pick up is four (4) times per week and that the establishment now uses self-closing dumpsters. (Tr. 7/02/03 at 155.) Mr. Woldemariam indicated that his dumpsters are always clean and not overflowing with trash. (Tr. 7/02/03 at 156.)

## CONCLUSIONS OF LAW

34. Pursuant to D.C. Official Code § 25-823(3) (2001), the Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code, including violations to the no manager on duty provision set forth in D.C. Official Code § 25-823(3) (2001); the substantial change provision set forth in D.C. Official Code § 25-404(a) (2001); the noise and litter provisions set forth in D.C. Official Code §§ 25-725(a)(1) and 25-726(a) (2001); and the voluntary agreement provision set forth in D.C. Official Code § 25-446(c) (2001). Section 802 of 23 DCMR (2004) authorizes the Board to fine a licensee at a show cause hearing not less than two-hundred and fifty dollars (\$250.00) and not more than five-hundred dollars (\$500.00) for a first secondary tier violation. The Board notes that during the June 25, 2003 hearing, the Office of the Attorney General for the District of Columbia dropped Specification B of Charge I. The Board is also dismissing Specification C of Charges III and V and Specification A of Charge V, for the reasons described below.

35. With regard to Charge I, the Board must determine whether the Respondent failed to superintend in person, or through a manager approved by the Board, the business for which the license was issued, in violation of D.C. Official Code § 25-823(3) (2001). In this instance, the testimony of Investigator Logan revealed that while visiting the establishment on October 13, 2002, Investigator Logan did not observe an ABC licensed manager on duty or the owner of the establishment present on the premises. Additionally, Investigator Logan noted that the establishment was open and operating on October 13, 2002 and that there were patrons inside of the establishment consuming alcoholic beverages. The testimony of Investigator Logan revealed that the establishment does have an ABC licensed manager; however, that individual was not present at the establishment on October 13, 2002. The Board found that there was no evidence put forth by the Respondent to establish that either the owner of the establishment or an ABC licensed manager was superintending the establishment on October 13, 2002. To the contrary, Mr. Woldemariam admitted that the first floor of the establishment was open on October 13, 2002 from 5:00 p.m. to 11:00 p.m., but he could not confirm whether he was present at the establishment. Furthermore, the testimony of Mr. Keller, who is an ABC licensed manager for the Respondent, revealed that he was not present at the establishment on October 13, 2002. Accordingly, the Board finds that on October 13, 2002, the Respondent failed to superintend the licensed establishment either in person or through an ABC licensed manager, in violation of D.C. Official Code § 25-823(3) (2001), and should be fined \$500.00 pursuant to 23 DCMR §§ 800 and 802 (2004), rather than a suspension or revocation of the Respondent's license.

36. With regard to Charge II, the Board must determine whether the Respondent made substantial changes in the operation of the licensed establishment without applying to or obtaining approval from the Board as required by D.C. Official Code § 25-404(a) (2001). In this instance, the Board must determine whether the Respondent expanded the operation of the licensed establishment to allow for the permanent use of a summer garden. The testimony of Investigator Logan revealed that while a separate substantial change application was never filed with the Board for use of the establishment's summer garden, the Respondent's intent to use the establishment's second floor rear patio as a summer garden was documented on the Respondent's November 9, 1984 IR form. The Board found the testimony of Mr. Woldemariam to reveal that Mr. Woldemariam believed he had received Board approval for use of the roof

deck subject to filing the November 9, 1984 IR form and that the establishment's roof deck has been continuously used since 1985. The Board notes that the Respondent's voluntary agreement, dated January 16, 2001, also makes reference to the establishment's roof deck and the hours of operation for the roof deck. The testimony of Mr. Keller revealed that in 1988, when Mr. Keller was a musical performer at the establishment, the Respondent's summer garden was in operation. Additionally, the testimony of Mr. Migunes and Mr. Donahoe, each of whom have been employed by the Respondent since 1992 and 1996, respectively, both revealed that the establishment's summer garden has been in operation for the entire duration of their employment with the Respondent. Based upon the above, the Board finds that the Respondent did not expand the operation of the licensed establishment to allow for permanent use of a summer garden as prohibited by D.C. Official Code § 25-404(a) (2001). Rather, the Board finds that the Respondent was approved for use of the second floor rear patio in 1984 as part of the establishment's original licensed premises.<sup>4</sup>

37. With regard to Charge III, the Board must determine whether the Respondent produced or caused to be produced loud noise and music of such intensity that it could be heard outside of the licensed establishment, in violation of D.C. Official Code § 25-725(a)(1) (2001). With regard to Charge V, the Board must determine whether the Respondent failed to comply with the terms of the voluntary agreement, dated January 16, 2001, specifically the noise control provisions of paragraph three (3), in violation of D.C. Official Code § 25-446(c) (2001).<sup>5</sup> The Board is dismissing Specification C of Charges III and V because the evidence presented did not prove that the Respondent exceeded the District's maximum noise limit of sixty decibels (60dB). On the contrary, the testimony of Investigator Logan revealed that on January 18, 2003, Columbia Station, the ABC establishment adjacent to the Respondent's establishment, was found in violation of the District's noise regulations and fined \$500.00 as a result of a noise ambient reading performed by DCRA Inspector Lowery. Additionally, the Board is dismissing Specification A of Charge V. The testimony of Investigator Logan established that the Respondent did not install an additional layer of plexiglas to all of the establishment's windows as required by the Respondent's January 16, 2001 voluntary agreement. However, Mr. Woldemariam's testimony revealed that the plexiglas was removed from some of the windows because he was informed by a District of Columbia Fire Inspector that it was a fire code violation for the windows to be covered with plexiglas. While the Board did not receive any written evidence from the Respondent in support of the Fire Inspector's observation, the Board finds the observation to be both plausible and logical. The Board also notes that in the Respondent's most recent voluntary agreement, dated February 2, 2005, the noise control provision has been amended to allow the Respondent to install insulated glass windows or the additional layer of plexiglas. As a result, the Board is dismissing Specification A of Charge V, because the Respondent's February 2, 2005 voluntary agreement provides the Respondent with a safer alternative for soundproofing the establishment's windows, which the Respondent is expected to comply with in accordance to D.C. Official Code § 25-446(c) (2001).

<sup>4</sup> The Board notes that provision 1.5 of the Respondent's February 2, 2005 voluntary agreement provides that the Respondent "intends to enclose the existing rear second floor deck for year round use for the purpose of serving food and alcoholic beverages" and that the Respondent agrees to provide the parties with a new Certificate of Occupancy.

<sup>5</sup> The Board will address Charges III and V simultaneously as they contain almost identical specifications and the noise control provision of the Respondent's January 16, 2001 voluntary agreement incorporates much of the same text contained in D.C. Official Code § 25-725(a)(1) (2001).

38. The testimony of Investigator Logan revealed that on November 16, 2002 and January 16, 2003, Investigator Logan heard music emanating from the inside of the establishment while standing on the sidewalk across the street from the establishment and that on January 16, 2003, Investigator Logan observed the Respondent's ABC licensed manager standing outside of the establishment yelling the establishment's trade name. Additionally, Investigator Logan's testimony revealed that on November 16, 2002 he observed that the doors of the establishment were open. However, the testimony of Investigator Logan also established that on both occasions, the Respondent's staff complied with Investigator Logan's instructions to reduce the level of music and/or noise heard. The Board took into account the efforts made by the Respondent, as described in the testimony of Mr. Woldemariam and Mr. Keller, to make the establishment more soundproof and minimize sound leakage, including approximately twenty-six thousand dollars (\$26,000.00) in structural modifications made to the establishment. The testimony of Mr. Keller and Mr. Donahoe also established that a sound level meter is used by the staff on a regular basis to check sound levels at exterior points of the establishment and that Mr. Woldemariam has given the staff specific instructions to keep all doors and windows closed.

39. Relying on the testimony and evidence presented, the Board finds that the Respondent is not in violation of D.C. Official Code § 25-725(a)(1) (2001), as set forth in Charge III. Pursuant to D.C. Official Code § 25-725(b)(3) (2001), the noise prohibition of D.C. Official Code § 25-725(a)(1) (2001) shall not apply to licensed establishments which are located within a C-1, C-2, C-3, C-4, C-M, or M zone, as defined by the zoning regulations for the District of Columbia. Consequently, D.C. Official Code § 25-725(a)(1) (2001) does not apply to the Respondent's establishment because the establishment is located in a C-2-B zone district. However, the Board does find that on November 16, 2002, the Respondent failed to comply with the noise provision of its voluntary agreement by allowing the basement door of the establishment to remain open, in violation of D.C. Official Code § 25-446(c) (2001), as set forth in Charge V. The Board finds that the Respondent's violation of D.C. Official Code § 25-446(c) (2001), does not warrant the revocation or suspension of the Respondent's license, but rather a warning to the Respondent as to the seriousness of said violation. Although the Board is encouraged by the structural modifications and technological improvements made by the Respondent, such efforts do not eliminate the Respondent's legal responsibility to comply with the terms of its voluntary agreement pursuant to D.C. Official Code § 25-446(c) (2001). The Respondent is hereby warned that any future violations to the Respondent's voluntary agreement may result in more punitive penalties by the Board.

40. With regard to Charge IV, the Board must determine whether the Respondent failed to maintain and ensure the immediate environ of the licensed establishment is free of trash, garbage and other litter, in violation of D.C. Official Code § 25-726(a) (2001). With respect to Charge VI, the Board must determine whether the Respondent failed to comply with the terms of the voluntary agreement, dated January 16, 2001, specifically the trash and garbage provisions of paragraph four (4), in violation of D.C. Official Code § 25-446(c) (2001).<sup>6</sup> The Board found the testimony of Investigator Logan to reveal that on January 11, 2003 and on January 12, 2003, the Respondent's dumpsters, located in the alleyway behind the establishment, were not closed and were overflowing with trash. Furthermore, Mr. Woldemariam admitted during his testimony that

<sup>6</sup> The Board will address Charges IV and VI simultaneously as they contain the same specification.

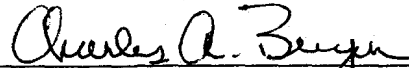
on January 12, 2003, the establishment's dumpsters were overflowing. In making its determination, the Board considered the efforts made by the Respondent, as described in the testimony of Mr. Woldemariam, to replace the establishment's old dumpsters with self-closing dumpsters and to increase the number of trash pick-up times for the establishment to four (4) times per week. As a result, the Board finds the Respondent's violation of D.C. Official Code §§ 25-726(a) and 25-446(c) (2001), warrants a fine of \$250.00 pursuant to 23 DCMR §§ 800 and 802 (2004), rather than a suspension or revocation of the Respondent's license.

41. In conclusion, the Board finds that the Respondent's violation of D.C. Official Code § 25-823(3) (2001), as set forth in Charge I, warrants a fine of \$500.00. The Board finds that the Respondent is not in violation of D.C. Official Code § 404(a) (2001), as set forth in Charge II. The Board finds that the Respondent is not in violation of D.C. Official Code § 25-725(a)(1) (2001), as set forth in Charge III. The Board finds that the Respondent's violation of D.C. Official Code § 25-446(c) (2001), as set forth in Charge V, does not warrant a suspension or revocation of the Respondent's license or other penalty. Finally, the Board finds that the Respondent's violation of D.C. Official Code §§ 25-726(a) and 25-446(c) (2001), as set forth in Charges IV and VI, warrants a fine of \$250.00. The total fine of \$750.00 is to be paid by the Respondent within thirty (30) days of receipt of this Order.

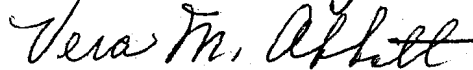
### ORDER

Accordingly, it is this 27th day of September 2006, **ORDERED** that:

1. The Respondent pay a fine of \$750.00 within thirty (30) days of receipt of this Order; and
2. Copies of this Order shall be sent to the Respondent and the Office of the Attorney General.

District of Columbia  
Alcoholic Beverage Control Board

Charles A. Burger, Chairperson



Vera M. Abbott, Member



Judy A. Moy, Member

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Audrey E. Thompson, Member

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Peter B. Feather, Member

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Albert G. Lauber, Member

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Eartha Isaac, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002. Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).

**THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**In the Matter of:**

The Journey Group, Inc.

t/a Blue Fin Sushi

Application for a Retailer's Class CR

License – substantial change

at premises

2309 18<sup>th</sup> Street, N.W.

Washington, D.C.

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Case no.:

60833-05/039P

License no.:

71271

Order no.:

2005-39

**BEFORE:**

Charles A. Burger, Chairperson

Vera M. Abbott, Member

Audrey E. Thompson, Member

Judy A. Moy, Member

Peter B. Feather, Member

Albert G. Lauber

Eartha Isaac

**ALSO PRESENT:** Shrinath Malur, on behalf of the Applicant

Bryan Weaver, on behalf of Advisory Neighborhood

Commission 1C, and Denis James, President, on behalf of the Kalorama  
Citizens Association (Protestants)

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

The substantial change application, filed by The Journey Group, Inc., t/a Blue Fin Sushi, to add recorded music by an individual, such as an employee or deejay, at premises 2309 18<sup>th</sup> Street, N.W., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on June 15, 2005. It was determined at the June 15, 2005 roll call hearing that timely protests were filed pursuant to D.C. Official Code § 25-601 (2001) by Alan J. Roth, Chairperson, on behalf of Advisory Neighborhood Commission ("ANC") 1C, and Denis James, President, on behalf of the Kalorama Citizens Association ("KCA").

At the June 15, 2005 roll call hearing, the KCA also raised the issue of whether the Applicant's existing voluntary agreement, dated November 12, 2004, between the Applicant, the KCA and the Reed Cooke Neighborhood Association ("RCNA"), prohibited a disc jockey at the establishment. On June 15, 2005, the Board continued the hearing until June 22, 2005 to: (1) provide the Board with an opportunity to hear from the parties with regard to whether the Applicant's November 12, 2004 voluntary agreement prohibits it from applying for a disc jockey

at the establishment, and (2) to provide the parties with an opportunity to submit written comments to the Board on this issue. Prior to the June 22, 2005 hearing, the Board received written comments from both the Applicant and Denis James, on behalf of the KCA. At the conclusion of the June 22, 2005 hearing, the Board took its decision in the matter under advisement. The Board having considered the evidence, the arguments of the parties, and the documents comprising the official file, makes the following:

### FINDINGS OF FACT

1. The Applicant's establishment holds a Class "CR" retailer's license and is located at 2309 18<sup>th</sup> Street, N.W. (Alcoholic Beverage Regulation Administration ("ABRA") Application File No. 60833.) By letter, dated March 15, 2005, the Applicant filed a substantial change request with the Board to add recorded music by an individual, such as an employee or deejay. (ABRA Application File No. 60833.) Timely protests were filed in opposition to the substantial change request, pursuant to D.C. Official Code § 25-601 (2001), by Alan J. Roth, Chairperson, on behalf of Advisory Neighborhood Commission ("ANC") 1C, and Denis James, President, on behalf of the Kalorama Citizens Association ("KCA"). (Tr. 6/15/05 at 5-6; ABRA Protest File No. 60833-05/039P.)

2. At the June 15, 2005 roll call hearing, the KCA raised the issue of whether the Applicant's existing voluntary agreement, dated November 12, 2004, between the Applicant, the KCA and the Reed Cooke Neighborhood Association ("RCNA"), prohibited a disc jockey at the establishment. (Tr. 6/15/05 at 6-7, 9.) On June 15, 2005, the Board continued the roll call hearing until June 22, 2005 to: (1) provide the Board with an opportunity to hear from the parties with regard to whether the Applicant's November 12, 2004 voluntary agreement prohibits it from applying for a disc jockey at the establishment, and (2) to provide the parties with an opportunity to submit written comments to the Board on this issue. (Tr. 6/15/05 at 11-13.) Prior to the June 22, 2005 hearing, the Board received written comments from both the Applicant and Denis James, on behalf of the KCA. (ABRA Protest File No. 60833-05/039P.)

3. Provision 5(g) of the Applicant's November 12, 2004 voluntary agreement prohibits the Applicant from having "live entertainment of any type", except on New Year's Eve into January 1<sup>st</sup> until 4:00 a.m. and up to six (6) times per year, including New Year's Eve, under a one-day substantial change as set forth in Title 23 of the District of Columbia Municipal Regulations ("DCMR") § 716 (2004).<sup>1</sup> Additionally, under provision 5(g) of the voluntary agreement, the term "live entertainment" is defined to not include the playing of recorded music, which is permitted at the establishment. (ABRA Application File No. 60833.)

4. The Board heard arguments from the parties on June 22, 2005 with regard to whether provision 5(g) of the establishment's voluntary agreement prohibits it from having a disc jockey. (Tr. 6/22/05 at 1-34.) Mr. Shrinath Malur, President, The Journey Group, Inc., argued that when

<sup>1</sup> The Board notes that provision 5(g) of the November 12, 2004 agreement incorrectly references "23DCMR 1003.1 and 23DCMR 1003.2" as the regulatory authority for one-day substantial changes by the holder of an on-premises retailer's license. The Alcoholic Beverage Control Board adopted a new version of Title 23 of the District of Columbia Municipal Regulations as published in the D.C. Register at 51 DCR 4309 (April 30, 2004). The Board's one-day substantial change authority can now be found at 23 DCMR § 716 (2004).



he entered into the voluntary agreement he thought it just prohibited bands and did not know that the District of Columbia defined "entertainment" to include a disc jockey and that he did not think that "live entertainment" meant a disc jockey. (Tr. 6/22/05 at 4-5, 8.) Mr. Malur argued that he would not have agreed to sign away a right to have a disc jockey play music in the restaurant. (Tr. 6/22/05 at 4.) The KCA argued that provision 5(g) prohibits the Applicant from having a disc jockey. (Tr. 6/22/05 at 11, 14.) Specifically, the KCA argued that the parties were very specific in their discussions with regard to the differences between live entertainment and recorded music and what would be permitted at the establishment in crafting provision 5(g) of the voluntary agreement. (Tr. 6/22/05 at 11-16.) The KCA's position was supported by then Reed Cooke Neighborhood Association President Peter Lyden who indicated that discussions regarding the types of music at the establishment focused on background music with tapes and compact discs rather than disc jockeys, which he considered to be entertainment. (Tr. 6/22/05 at 16-17.) At the conclusion of the June 22, 2005 hearing, the Board took its decision in the matter under advisement. (Tr. 6/22/05 at 34.)

### CONCLUSIONS OF LAW

5. The Applicant has filed a substantial change request with the Board which includes seeking permission to have a disc jockey. In this case, the Board must determine whether provision 5(g) of the establishment's November 12, 2004 agreement prohibits the establishment from having a disc jockey on a permanent basis. Specifically, with some limited exceptions, provision 5(g) of the Applicant's voluntary agreement indicates in relevant part that "[t]here will be no live entertainment of any type" at the establishment.

6. Determining what the phrase "no live entertainment" in provision 5(g) of the agreement is intended to prohibit at the Applicant's establishment requires the Board to examine the statutory definition of the term "entertainment." Under D.C. Official Code § 25-101 (21)(A), the term "entertainment" is defined as "live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term 'entertainment' shall not include the operation of a jukebox, a television, a radio, or other prerecorded music." The definition of "entertainment" found in D.C. Official Code § 25-101 (21) (A) is virtually identical to the definition of the term "entertainment" as set forth in 23 DCMR § 199 (2004) which defines "entertainment" in relevant part as "live music or any other live performance conducted by an actual person or persons, including but not limited to: live bands, karaoke, comedy shows, poetry readings, and disc jockeys."

7. Having considered the terms of provision 5(g) of the November 12, 2004 voluntary agreement, the written arguments articulated by the parties, and the definition of "entertainment" as set forth in D.C. Official Code § 25-101(21)(A) and 23 DCMR § 199 (2004), the Board finds that the intent of the existing voluntary agreement, dated November 12, 2004, between the Applicant, the KCA and the RCNA, is to prohibit a disc jockey from performing at the establishment on a permanent basis. Specifically, while recorded music is permitted at the establishment, provision 5(g) of the November 12, 2004 agreement explicitly prohibits "live entertainment" at the establishment, with limited exceptions. Contrary to the Applicant's argument that a disc jockey is not live entertainment, the definition of "entertainment", as set forth in D.C. Official Code § 25-101 (21)(A) and 23 DCMR § 199 (2004), includes the live

performance of a disc jockey and is therefore synonymous with the term "live entertainment" used in provision 5(g). The Board also finds compelling the argument made by Mr. James that the parties' intent in negotiating provision 5(g) to prohibit "live entertainment" is clarified by the parties' decision to create a specific exception in the voluntary agreement to allow for the playing of recorded music, i.e., background music, which, unlike the spinning of records or compact discs, does not entail a live performance by an actual entertainer.

8. Consequently, the Board is denying the substantial change application as it pertains to the establishment's request to have a disc jockey, which the Board finds to be prohibited by the Applicant's November 12, 2004 voluntary agreement. The Board notes that pursuant to D.C. Official Code § 25-446(d)(2), an amendment to a voluntary agreement by fewer than all of the parties to the agreement can only be accepted by the Board during the renewal period and after four (4) years from the date of approval of the agreement. In this instance, the Applicant could seek to unilaterally amend its November 12, 2004 agreement during the 2010 renewal period for class CR licenses.

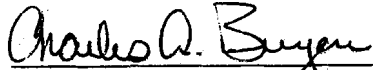
9. Finally, there is no dispute that the Applicant is permitted to have recorded music, which is permitted by provision 5(g) of the Board-approved voluntary agreement so long as this does not involve a live performance by a disc jockey. This is not considered "entertainment" under the definitions set forth above.

Accordingly, it is this 27th day of September 2006, **ORDERED** that:

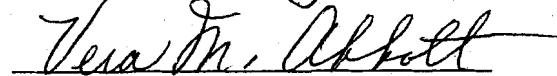
1. The substantial change application request of The Journey Group, Inc., t/a Blue Fin Sushi, to have a disc jockey, at 2309 18<sup>th</sup> Street, N.W., Washington, D.C., is **DENIED**;

2. Copies of this Order shall be sent to the Protestants and the Applicant.

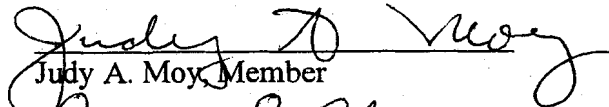
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District of Columbia  
Alcoholic Beverage Control Board

Charles A. Burger, Chairperson



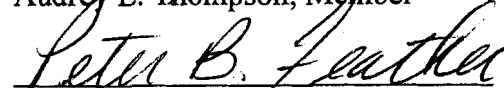
Vera M. Abbott, Member



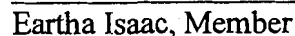
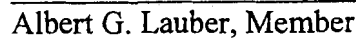
Judy A. Moy, Member



Audrey E. Thompson, Member



Peter B. Feather, Member



Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002. Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
Business and Professional License Administration**

**NOTICE**

**Public Hall License for the National Society of the Daughters of the  
American Revolution Extended to January 07, 2007**

D.C. Official Code Title 47 Section 47-2805.1 authorizes the Mayor to establish a licensing period for which a license was issued under the General Licensing law. Before the public hall license is renewed, D.C. Official Code Title 47 Section 47-2820 requires that the Director of the Department of Consumer and Regulatory Affairs (DCRA) shall give written notice by mail to licensees and the affected Advisory Neighborhood Commission thirty (30) days prior to granting or renewing a license. Further, the Director shall cause the publication of the notice in the D.C. Register.

This Notice is notifying the public that DCRA hereby extends the renewal deadline for the Public Hall Establishment, **the National Society of the Daughters of the American Revolution** until January 07, 2007.

If you would like more information pertaining to this notice, please contact the Basic Business License Info-Center at (202) 442-4311.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF THE ENVIRONMENT**

**NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to Title 20 DCMR § 206, the Air Quality Division (AQD) of the Department of the Environment located at 51 N Street, N.E., Washington, D.C., intends to issue a permit to construct and operate an emergency generator to Overland Contraction Inc., located at 6001 Georgia Avenue, N.W. Washington D.C.

The application and the draft construction and operating permit are available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Abraham T. Hagos, at (202) 535-1354.

Interested persons may submit written comments within 30 days of publication of this notice. Comments should be addressed to Stanley C. Tracey, Chief, Engineering and Planning Branch, Air Quality Division, Department of the Environment, 51 N Street, N.E., Washington, D.C. 20002. No written comments postmarked after November 19, 2006 will be accepted. The written comments must also include the person's name, telephone number, affiliation, if any, and mailing address, and must contain a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. For more information, please contact Abraham T. Hagos at (202) 535-1354.

**FRIENDSHIP PUBLIC CHARTER SCHOOL**

**INVITATION FOR BID (IFB)**

**SUPPLIER FOR NATIONAL SCHOOL BREAKFAST AND LUNCH PROGRAM**

**FRIENDSHIP PUBLIC CHARTER SCHOOL** is seeking bids from prospective suppliers for the following item to be use in the National School Breakfast and Lunch Program:

1. Breakfast Breaks (Eastside Entrees)
2. Meal Break (Eastside Entrees)

IFB specification for each product line may be picked up by interested parties beginning October 20, 2006 from 10am – 3 pm at:

Friendship Public Charter Schools (FPCS)  
120 Q Street, NE 2<sup>nd</sup> Floor Reception Desk  
Washington, DC 20002  
(202) 281.1700

Electronic copies of all bid specifications will be available by e-mail request on October 20, 2006. E-mail your request to [ajhaley@friendshipschools.org](mailto:ajhaley@friendshipschools.org) or call 202,281.1733.

**FRIENDSHIP PUBLIC CHARTER SCHOOL**

**REQUEST FOR PROPOSAL**

**FOR FEASIBILITY STUDY**

Interested Parties shall respond to this RFP by submitting (4 copies, 1 original inclusive) sealed qualification statements and by addressing the specific proposal requirements as requested in this RFP in an envelope clearly marked "RFP—FEASIBILITY STUDY TO FRIENDSHIP PUBLIC CHARTER SCHOOL" to

Ms. Valerie Holmes  
Friendship Public Charter School (FPCS)  
120 Q Street, NE  
Suite 200  
Washington, DC 20002

By no later than **4:00 PM Friday October 27, 2006**

**FPCS (Friendship Public Charter School) reserves the right to reject any and all qualification statements, to cancel this solicitation, and to waive any informalities or irregularities in procedure.**

**"LSDBE" contractors are encouraged to submit proposals**

**Introduction**

FPCS is soliciting proposals and qualifications statements from interested parties having specific interest and qualifications in the areas identified in this solicitation. A selection committee will review and evaluate all qualification statements and proposals and may request that the bidders make oral presentations by phone or in person and or provide additional information. The selection committee will rely on the qualification statements and proposals in selection of finalists and, therefore, bidders should emphasize specific information considered pertinent to this solicitation and submit all information requested

**Background**

Friendship Public Charter School (FPCS) is the largest public charter school system serving nearly 4,000 students in Washington D.C. on five campus locations. FPCS's mission is to prepare a diverse, cross-section of children for success as students, workers, and citizens by providing them with a world-class education that motivates students to achieve high academic standards, enjoy learning and develop as responsible, ethical contributors to their communities. Students of the Friendship Public Charter School System benefit from a high-quality school design, caring teachers, 21st century technology, and strong connections with their respective communities. Since its founding in 1998, the Friendship Public Charter School System has opened four of its five campuses in formerly vacant D.C. public school buildings. The fifth

campus is housed in a converted Safeway supermarket. It has invested over thirty-million dollars to turn these buildings into attractive centers of learning where children and teens feel valued and supported. Using proven teaching techniques and state-of-the art technology, students have made dramatic gains on the Stanford Achievement Tests and in a city where barely 52 percent of young people are graduated from high school, this year, Friendship's Collegiate Academy achieved a 92 percent graduation rate among a senior class of 300. These students received offers from Bucknell University, the College of William and Mary, Carnegie Mellon University, Howard University and the Rochester Institute of Technology.

The Board of Trustees of the Friendship Public Charter School has determined that to reach FPCS's next stage of development, it must consider raising the level of its financial resources. To reach a definitive decision regarding what that level of support might be, and who might provide it, FPCS will select a consulting firm to provide it with an objective assessment of its ability to raise fifty-million dollars over a three-year period.

### **Project Scope**

The purpose of this RFP is to identify a consulting firm with extensive experience in conducting feasibility studies for nonprofit organizations that provide superior educational opportunities to underserved populations. The firm should craft a feasibility study to the specific needs of FPCS.

The Friendship Public Charter School is seeking a consulting firm with expertise in conducting feasibility studies for urban institutions that make positive changes in the educational dynamic of young people from pre-school to the 12<sup>th</sup> grade. To do this, the firm must execute the following tasks:

- Design and conduct a formal feasibility study with a tested draft case statement and a gift range chart needed to reach the goal. To perform this task, the firm must interview select FPCS stakeholders/constituents (e.g. trustees, key staff members, students, faculty members, alumni, potential major donors, and other people of influence and affluence) to assess FPCS's capability to raise fifty million dollars.
- The results of the interviews must be synthesized and analyzed by the consulting firm and the firm must prepare a written and an oral report with recommendations that will be presented to the Board of Trustees. .
- An Executive Summary of the final report should be prepared by the consulting firm to be distributed to the people interviewed.

### **Proposal Requirements**

The Friendship Public Charter School is seeking a proposal with a fixed-cost budget of not more than \$40,000; however, reasonable travel and other expenses will be reimbursed at cost with prior approval of FPCS.

- Define your proposed consulting approach for this type of project, including your role as the consulting firm and the expected role of FPCS as the client.



- Describe your general work plan for completing the project, including how the deliverables will be produced.
- Include a project timeline to include start of the project, activities, and end of the project. Note the extent to which you will utilize FPCS's resources, such as staff, space, computers, and/or other equipment.
- Present a detailed budget for the project and describe the assumptions made in determining your costs for this project
- Give a description of your firm including history, experience with clients similar to FPCS, ability to skillfully interact with diverse populations respecting their cultural, social, and educational differences, and a demonstrated knowledge of the challenges and opportunities that confront the FPCS.
- Provide an overview of your firm's organization and structure including your overall mission and strategy and its Equal Opportunity Statement.
- Describe why you believe your firm is the best suited for this project. Include information on projects of a similar nature.
- Attach three client references with names and addresses.
- Identify the project leader and any other personnel and their responsibilities as they relate to the project. Attach resumes for all key personnel.
- Include a proposed unsigned contract, which will also, include terms, payments, and total amount contract will not exceed

#### **Ownership of Material**

All data and materials gathered, developed, prepared, or used in the completion of this project, including, but not limited to, reports, surveys, plans, charts, literature, mailings, analyses, notes or memoranda, and documents, which are prepared for or are the result of the services required as part of this project shall be and remain the property of FPCS.

#### **Data Confidentiality**

All financial, statistical, personnel, and/or technical data supplied by FPCS must be treated as confidential data. The firm will be required to use reasonable care to protect the confidentiality of such data.

#### **Legal Issues**

The Friendship Public Charter School requires that you provide any information about administrative complaints, lawsuits, and/or charges involving employment discrimination, sexual harassment, wage and hour (e.g. overtime and minimum wage), and any other such employment issues. We also require information about any and all lawsuits, liens, restraining orders, consent decrees, foreclosures, or other legal/financial actions, either now pending or in progress, which have been brought against your company or any of its officers/principals in the past seven years. Please provide detail about these items.

For further information, contact Ms. Valerie Holmes at (202 281-1723 or via e-mail at [vholmes@friendshipschools.org](mailto:vholmes@friendshipschools.org)

**FRIENDSHIP PUBLIC CHARTER SCHOOL  
REQUEST FOR PROPOSALS  
TEMPORARY EMPLOYMENT SERVICES**

Interested parties shall respond to this RFP by submitting (4 copies, 1 original inclusive) sealed qualification statements and by addressing the specific proposal requirements as requested in this RFP in an envelope clearly marked "RFP—TEMPORARY EMPLOYMENT SERVICES" to

Ms. Valerie Holmes  
Friendship Public Charter School (FPCS)  
120 Q Street, NE  
Suite 200  
Washington, DC 20002

By no later than **4:00 PM on Friday, October 27, 2006.**

**Introduction**

FPCS is soliciting proposals and qualification statements from interested parties having specific interest and qualifications in the areas identified in this solicitation. A selection committee will review and evaluate all qualification statements and proposals and may request that the bidders make oral presentations by phone or in person and or provide additional information. The selection committee will rely on the qualification statements and proposals in selection of finalists and, therefore, bidders should emphasize specific information considered pertinent to this solicitation and submit all information requested.

***Friendship Public Charter School Inc. ("Friendship") reserves the right to reject any and all qualification statements, to cancel this solicitation, and to waive any informalities or irregularities in procedure.***

**"LSDBE" contractors are encouraged to submit proposals**

**Project Scope**

It is the intent of this Request for Proposal (RFP) to select a qualified contractor to provide Friendship Public Charter School with temporary employment services. Prospective candidates should be able to provide various temporary employees to fill short and/or long term positions.

Possible Positions to be filled:

1. Receptionist
2. Mail Room Assistants
3. Data Entry
4. Administrative Assistants
5. Accounting Professionals

**Proposal Requirements**

Proposals shall include, at a minimum, the following information organized as follows in a qualification statement:

1. A brief discussion of the company/firm, its organization, and services offered;
2. Three references from clients, including at least one non-profit client (contact names and phone numbers).
3. A proposed unsigned contract, which include terms, payments, and total amount for contract not to exceed.

For further information, contact Ms. Valerie Holmes at (202) 281-1700

**District of Columbia  
Police Officers Standards and Training Board**

**NOTICE OF PUBLIC MEETING**

The District of Columbia Police Officers Standards and Training Board will hold two non-regularly scheduled meetings on Monday, November 6, 2006, and Monday, December 18, 2006. The meetings will begin at 5:00 p.m. and end no later than 7:00 p.m. The meetings will be held in Room 1117 South, 441 4<sup>th</sup> Street, Northwest, Washington, D.C. 20001. You must present picture identification in order to enter the building.

Copies of the materials to be voted on by the Board at the meeting may be obtained in advance 2 weeks prior to the meeting date. Typed written comments on the materials may be submitted in advance of the meeting to the Office of the Board until 7 working days to the meeting. Written comments received via e-mail or postmarked 7 working days prior to the meeting date.

Anyone interested in the work of the District of Columbia Police Officers Standards and Training Board may attend the meeting. Citizens may make oral comments during a thirty-minute comment period at the end of the meeting. The comments will be limited to three minutes. Anyone interested in making oral comments may sign up in advance. Slots will be allotted on a "first come-first served" basis.

Anyone interested in obtaining written materials or participating in the open comments portion of the meeting may contact:

Ms. Joan Weiss on (202) 727-9023 or [joan.weiss@dc.gov](mailto:joan.weiss@dc.gov)

Written comments may be mailed to:

District of Columbia Police Officers Standards and Training Board  
300 Indiana Avenue, Northwest, Room 5031  
Washington, D.C. 20001  
Attn: Ms. Joan Weiss

or e-mailed to Ms. Weiss at [joan.weiss@dc.gov](mailto:joan.weiss@dc.gov)

Office of the Secretary of the  
District of Columbia

October 5, 2006

Notice is hereby given that the following named persons have been appointed as Notaries Public in and for the District of Columbia, effective on or after November 1, 2006.

Adewuyi, Enock K.	New	Super Pharmacy 1019 H St, NE 20002
Ahern, Mullane C.	New	D C Human Rights 441 4 <sup>th</sup> St, NW#570N 20001
Ali, Syed Z.	New	Chevy Chase Bank 925 15 <sup>th</sup> St, NW 20005
Anderson, III, Carleton J.	Rpt	CTFA 1101 17 <sup>th</sup> St, NW#100 20036
Asante, Grace	New	U S Dept of Commerce 14 <sup>th</sup> & Pa Ave, NW 20230
Balogun, B. Aaron	New	Flanagan Consulting 207 Const Ave, NE 20002
Barahona, Marta M.	New	Stonewall Title & Escrow 1050 17 <sup>th</sup> St, NW#600 20036
Barczik, Melissa J.	New	State Dept Fed C U 4 <sup>th</sup> & P Sts, SW 20319
Barhight, Sarah Foley	New	Akerman Senterfitt 801 Pa Ave, NW#600 20004
Battino, Morris R.	Rpt	1200 Perry St, NE#100 20017
Bowling, Una R.	New	SunTrust Bank 1571 Alabama Ave, SE 20032

Briggs, Carla J.	New	Esquire Deposition Serv 1020 19 <sup>th</sup> St,NW#620A 20036
Brown, Sandra L.	New	FedEx Kinko's 1019 15 <sup>th</sup> St,NW 20005
Bryson, Felipe	New	FedEx Kinko's 2400 M St,NW 20037
Caceres, Jose	New	Bailey Law Group 1615 L St,NW#1350 20036
Cameron, Sherene T.	New	NeighborWorks America 1325 G St,NW#800 20005
Chesser, Rhonda	New	F B I 601 4 <sup>th</sup> St,NW 20535
Chilcott, Kristine E.	Rpt	Banner & Witcoff 1001 G St,NW 20001
Ciotti, Jessica	New	Wachovia 5201 MacA Blvd,NW 20016
Colbert, Gretchen L.	Rpt	Lichtman Trister & Ross 1666 Conn Ave,NW5thFl 20009
Colbert, Ronald A.	New	Law Office 1717 K St,NW#600 20006
Coleman, Tesha	New	MedStar Research Inst 650 Pa Ave,SE#230 20003
Collins, Sean	New	Chevy Chase Bank 4860 Mass Ave,NW 20016
Conti, Mary S.	New	ArmedForcesRetirementHome 3700 N Cap St,NW 20011
Cooke, Diane M.	New	Kellogg Huber Hansen et al 1615 M St,NW#400 20036
Corey, Nicholas	New	Olender Reporting 1522 K St,NW#720 20005

Crider, Giles	New Wachovia Bank 215 Pa Ave, SE 20003
Currie, Carol	New Hunton & Williams 1900 K St, NW 20006
Dalil, Erdiyas	New Bank Fund Staff F C U 1818 H St, NW#MCC2300 20433
Dalton, Tony E.	New Bank of America 730 15 <sup>th</sup> St, NW 20005
Davenport, Ryan	New Wilson Elser Moskoswitz 1341 G St, NW 20005
Dickonson, Glenda L.	New Jones Day 51 LA Ave, NW 20001
Dickson, Debra L.	New Dept of Treasury/F M S 401 14 <sup>th</sup> St, SW 20227
Duckworth, Katrinka	New HNTB Architecture 421 7 <sup>th</sup> St, NW 20004
Edwards, Corey	New Bank of America 730 15 <sup>th</sup> St, NW 5thFl 20005
Errico, Luca	New 4601 Yuma St, NW 20016
Evans, LaVonne D.	New Dept of Mental Health 64 N Y Ave, NE5thFl 20002
Fleming, Kirston L.	New Public Defender Service 500 Indiana Ave, NW 20004
Foster, Colanda	New 710 Longfellow St, NW 20011
Foster, Malaika	New 315 Madison St, NW 20011
Fountain, Lezel	Rpt Carter Cafritz 1660 L St, NW#300 20036

Franklin, Krishawn	New	Lafayette F C U 1300 Pa Ave, NW#C1-80 20523
Frasier, Shundra L.	New	Holland & Knight 2099 Pa Ave, NW#100 20006
Garrison, Tyler R.	New	Avenue Settlement Corp 2401 Pa Ave, NW#H 20037
Gause, Shelly Y.	New	Mintz Levin Cohn et al 701 Pa Ave, NW 20004
Gibson, Vivian T.	New	Sibley Memorial Hospital 5255 Loughboro Rd, NW 20016
Guerrero, Ernesto	New	Bank of America 730 15 <sup>th</sup> St, NW 5th Fl 20005
Hardin, Victoria J.	New	1253 Mt Olivet Rd, NE#3 20002
Hardmon, Lisa Burford	New	LCB Consulting 611 Pa Ave, SE 20003
Hardy, Marguerita Parish	New	U S House/Representatives L H O B #B227 20515
Harris, Tammie L.	New	CB Richard Ellis 555 11 <sup>th</sup> St, NW#300 20004
Haynie, Katrina M.	New	A A A S 1200 N Y Ave, NW 20005
Heavey-Frank, Joan M.	New	Natl Assoc/Broadcasters 1771 N St, NW 20036
Hernandez, Francisca T.	New	Tito Contractors 7308 Ga Ave, NW 20012
Hinkle, Deborah L.	New	3027 K St, SE 20019
Holland, Toby	New	The Cochran Firm 1100 N Y Ave, NW#340W 20005



Holly, Valerie	New	Wachovia Bank 3700 Calvert St,NW 20007
Holston, Otis A.	New	Capital Business Ctr 801 Mt Vernon Pl,NW 20001
Jallow, Robin M.	New	1700 Otis St,NE 20018
Jean, Natalie R.	New	Somerset Development Co 4115 Wis Ave,NW#210 20016
Johnson, Caroline B.	New	Arent Fox 1050 Conn Ave,NW 20036
Johnston, David	Rpt	David Johnston & Assoc 1875 F St,NW#500 20006
Jones, Drucilla Celeste	New	728 Roxboro Pl,NW 20011
Jones, Sherri Y.	Rpt	Rosier & Associates 1025 Conn Ave,NW#1012 20036
Justice, Raymond C.	New	ACDI/VOCA 50 F St,NW#1100 20001
Keller, Rodney	New	Capital Business Ctr 801 Mt Vernon Pl,NW 20001
Kendrick, Matthew E.	New	Wachovia Bank 600 Md Ave,SW 20024
Kim, Erika P.	New	Wachovia Bank 1100 Conn Ave,NW 20036
Kirk, Lisa	New	L A D Reporting 1100 Conn Ave,NW#850 20036
Kokernak, Lauren M.	New	A C C 1025 Conn Ave,NW#200 20036
Kotchenreuther, II, Robert	Rpt	Cleveland Park Valet 3303 Conn Ave,NW 20008

Kunz, Amy L.	New	Latin Amer Youth Center 1419 Columbia Rd,NW 20009
Laske, Alexis Marie	New	Mintz Levin Cohn 701 Pa Ave,NW 20004
Lenahan, Rachel	New	Stewart Title 11 Dupont Circle,NW 20036
Lessner, Christine R.	Rpt	Katten Muchin Rosenman 1025ThJeff St,NW#700E 20007
Levay, Cynthia Anne	New	Hughes Hubbard Reed 1775 I St,NW#600 20006
Lewis, Carol J.	Rpt	U S A I D 1300 Pa Ave,NW#66C 20523
Lorant-Young, Kathy	New	2019 4 <sup>th</sup> St,NE 20002
Lothridge, Jennifer	New	Foundations/Home & Comm 1012 14 <sup>th</sup> St,NW 20005
McGahey, Shannon	New	A C C 1025 Conn Ave,NW#200 20036
Mahmoud, Mariam	New	Marmara Corporation 1125 Okie St,NE 20002
Mahmoud, Mary Hellen	New	Dechert LLP 1775 I St,NW 20006
Majette, Rebecca Deloris	Rpt	Hogan & Hartson 555 13 <sup>th</sup> St,NW 20004
Manzila, Christian	New	Herson Glass Company 72 Florida Ave,NE 20002
Martinez, Grisella M.	New	2325 15 <sup>th</sup> St,NW#514 20009
Mayhew, Katrina J.	New	SKB Architecture & Design 1818 N St,NW#510 20036

Mendez, Elsa R.	New	1342 Ingraham St,NW 20011
Meyer, Kathleen J.	New	Wallace King et al 1050 ThJeff St,NW 20007
Meyer, Wilson	New	Bank of America 401 M St,SW 20024
Miller, Ericka	New	27 Sheridan St,NE 20011
Minnicozzi, Jason	New	Freilicher & Hoffman 919 18 <sup>th</sup> St,NW#250 20006
Morith, Colleen S.	New	Society of the Cincinnati 2118 Mass Ave,NW 20008
Nabinett, Ronnie	New	State Department F C U 2201 C St,NW#B641 20520
Newman, Ashley	New	Justice Fed Credit Union 935 Pa Ave,NW#8676 20535
Niblack, Ngoc K.	New	Arent Fox 1050 Conn Ave,NW 20036
Parker, Shaunte	New	Jackson Investment Co 125 Yuma St,NE 20032
Parson, Stephanie	New	Bank of America 401 M St,SW 20024
Paul-Cox, Imani E.	New	N I H Fed Credit Union 2100 Pa Ave,NW 20037
Pendergast, Peggy A.	New	Law Off/Horace Bradshaw 1644 6 <sup>th</sup> St,NW 20001
Perry, Annie K.	Rpt	705 15 <sup>th</sup> St,NE 20002
Plegge, Lisa Doussard	New	McKee Nelson 1919 M St,NW#200 20036

Powers, Alison	New	Latin Amer Youth Center 1419 Columbia Rd,NW 20009
Rameau, Richard H.	New	N I H Fed Credit Union 1310 Southern Ave,SE 20032
Reynolds, Elizabeth S.	New	Osborne & Deutsch 1666 Conn Ave,NW#325 20009
Robertson, Tranikka A.	New	NPS Plumbing Heating .. 1818 N Y Ave,NE#224 20002
Ruckh, Allison	New	A S P H 1101 15 <sup>th</sup> St,NW#910 20005
Salmberg, Markus	New	Hall & Associates 233 Pa Ave,SE#200 20003
Savage, Caroline	New	Farr Miller & Washington 1020 19 <sup>th</sup> St,NW#200 20036
Scott, Betty A.	Rpt	Quality Plan Admin 6101 16 <sup>th</sup> St,NW#418 20011
Settles, Rosanna	Rpt	Accurate Legal Services 808B L St,SE 20003
Seyon, Marina	New	Wachovia Bank 4340 Conn Ave,NW 20008
Slezak, Patricia A.	New	Rockport Capital 1919 Pa Ave,NW#725 20006
Smallwood, Janice A.	New	F B I 601 4 <sup>th</sup> St,NW 20535
Smith, Chad	New	Bank of America 730 15 <sup>th</sup> St,NW 5thF1 20005
Smith, Isiah E.	Rpt	Assoc/Trial Lawyers/Amer 1050 31 <sup>st</sup> St,NW 20007
Smith, Jacqueline	New	Preston Gates Ellis et al 1735 N Y Ave,NW#500 20006

Stramer, Karen L.	New	Stonewall Title & Escrow 1050 17 <sup>th</sup> St, NW#600 20036
Sumpter, Barbara	New	Edgewood Mgt 1730 7 <sup>th</sup> St, NW 20001
Tadesse, Aynalem	New	N I H Federal Credit Union 2100 Pa Ave, NW 20037
Thomas, Denise C.	New	C S O S A 633 Indiana Ave, NW 20004
Thomas, Janasha	New	Hawk One Security 1331 H St, NW#600 20005
Thomas, Janice	New	Cafritz Company 1825 K St, NW#1200 20006
Thorpe, Kevin	New	SunTrust Bank 1111 Conn Ave, NW 20036
Vaughn, Stacy A.	New	FedEx Kinko's 2020 K St, NW 20006
Vila-Boteler, Athene	Rpt	World Bank/MSN U11-1100 1818 H St, NW 20433
Washington, Kimi Jane	New	Epstein Becker Green 1227 25 <sup>th</sup> St, NW#700 20037
Watson, Cullen P.	New	1377 N C Ave, NE 20002
Weir, Stephanie S.	New	Office of James Kimsey 1700 Pa Ave, NW#900 20006
Wester, Donyelle L.	New	D O T/F H A 400 7 <sup>th</sup> St, SW#6311 20590
Wilhite, Linda M.	New	7100 8 <sup>th</sup> Ave, NW 20012
Williams, Carol C.	New	Passman & Kaplan 1090 Vt Ave, NW#500 20005

Yoon, Sanghi

New Madison Marquette  
1850 M St,NW 12thF1 20036

Zylberglait, Pablo

New Federal Trade Commission  
600 Pa Ave,NW 20580

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**

**Appeal No. 17391 of Diana de Brito and Jonathan Gottlieb** pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decisions of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Building Permit Nos. B-472018, B-450009, B-451175, B-452735, and B-452577 for property located at 2620 Foxhall Road, NW (Lot 1031, Square 1397).

**HEARING DATES:** November 29, 2005 and January 10, 2006  
**DECISION DATE:** January 10, 2006

**DECISION AND ORDER**

This appeal was filed with the Board of Zoning Adjustment (the Board) on June 24, 2005, challenging DCRA's decisions to approve five building permits that were issued over a period spanning between May, 2003 and April, 2005. The property owner to whom the permits were issued moved to dismiss the appeal and the Board scheduled a hearing on the motion. At the hearing, the Board heard from the property owner, from DCRA (who had joined in the motion to dismiss), and from the Appellant and the affected ANC. The Board found that the appeal of the first four permits had been untimely filed and that the appeal of the fifth permit (the fence permit) did not state a claim for a zoning review error. As a result, the Board granted the property owner's motion to dismiss. A full discussion of the facts and law that support this conclusion follows.

**PRELIMINARY MATTERS**

**Notice of Public Hearing**

The Office of Zoning scheduled a hearing on November 29, 2005. In accordance with 11 DCMR §§3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, ANC 3D (the ANC in which the subject property is located), the property owner, and DCRA.

**Parties**

The Appellant in this case is Diana de Brito and her husband, Jonathan Gottlieb (Appellant). Ms. de Brito and Mr. Gottlieb reside at 4610 Dexter Street, NW, which abuts the subject property to the north (See, tab B appended to Exhibit 20). Ms. de Brito authorized her husband to act on her behalf during the appeal (Exhibit 2).

Eugene and Carol Ludwig, the owners of the subject property, were represented by the law firm of Holland & Knight. As the property owner, the Ludwigs are

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automatically a party under 11 DCMR § 3199.1 and will hereafter be referred to as the owner.

ANC 3D, as the affected ANC, was automatically a party in this appeal. In a resolution dated December 5, 2005 (Exhibit 25), the ANC voted to support a continuance of the Board hearing. In a later resolution dated January 9, 2006, the ANC voted to support the appeal. The resolution was issued after a regularly scheduled monthly meeting with a quorum present (Exhibit 30). Among other things, the ANC cited the "piecemeal manner" in which the permits were obtained and the project had been developed, and a "massing of structures" that is inconsistent with the character of the Wesley Heights Overlay. Alma Gates, the ANC representative who testified at the hearing, stated that even though the subject property is outside of the Overlay, it impacts on nearby properties that are within its boundaries.

DCRA appeared during the proceedings and was represented by Lisa Bell, Esq.

#### **Motion to Dismiss and Continuance**

The owner filed a motion to dismiss prior to the hearing scheduled on November 29, 2005 (Exhibit 20). On that date appellant requested a continuance so that he and the ANC could respond to the owner's motion. Appellant also asked that the hearing be continued until such time as the Board issued its decision in Appeal No. 17285 (the "Economides case"), a case appellant claimed was "similar" to the present appeal. The owner and DCRA each argued against a lengthy continuance. They asserted that the Economides case had no bearing on this matter because it applied only to properties within the Wesley Heights Overlay, and the subject property was located outside of the Overlay. The Board declined to hold this matter in abeyance pending a final decision in the Economides case<sup>1</sup>. However, it did continue the hearing to January 10, 2006, directing filings from Appellant and the ANC by December 20, 2005, and any replies by January 3, 2006. It also granted appellant's request to amend his appeal.

### **FINDINGS OF FACT**

#### **The Property**

1. The property is located at 2620 Foxhall Road, NW, Lot 1031, Square 1397, and is zoned R-1-A. It is a large property consisting of approximately 124,980 square feet, which the owner has developed as a single-family home with a pool, tennis courts and related structures (Exhibits 1, 3).

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<sup>1</sup> A final order was issued on or about March 24, 2006, see, Appeal No. 17285 of Patrick J. Carome.



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2. Although the property is located within the Wesley Heights area, it is not located within the boundaries of the Wesley Heights Overlay (WH Overlay) (Exhibit 20, Tab C, Exhibit 27).<sup>2</sup>

### **The Permits**

3. DCRA issued four building permits within four months of each other in 2003 (the 2003 permits), as follows:

(a) Building Permit No. B451175, dated May 9, 2003 for site work and grading for a future single family dwelling, a retaining wall and a tennis court;

(b) Building Permit No. B452577, dated June 26, 2003, for the footing and foundation for the single-family dwelling;

(c) Building Permit No. B452735, dated July 1, 2003, which revised permit B451175 to change the structural design of the tennis court according to submitted plans; and

(d) Building Permit No. B4550009, dated September 15, 2003, for construction of a three-story wood frame house, a new driveway, retaining walls, and terraces. (See, Exhibits 3, 20, 27).

4. DCRA issued Building Permit No. B472018 (the fence permit) dated April 27, 2005, authorizing the construction of fences at the property. The fence permit allowed the following:

(a) "NEW FENCE – 7 [feet] ENTIRELY ON OWNER'S LAND"

(b) "BLACK VINYL COATED C/L 7 [FEET] FENCE"

(c) "(NATURAL) WOOD PRIVACY FENCE"

(d) "WROUGHT IRON (BLACK) FENCE"

(See, Exhibits 3, 20, and Attachment A to Exhibit 27).

### **Communications Between the Parties**

5. Appellant contacted the owner within a few weeks after purchasing his own property in January 2003. During that discussion and subsequent discussions, appellant asked about development plans and sought assurances that he would not be adversely affected by those plans (Exhibit 26, p. 3, 4).

6. Appellant also contacted the owner and his agents to "express objections" once construction began at the subject property (Exhibit 26). The record is unclear as to

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<sup>2</sup> The Wesley Heights (WH) Overlay is a zoning overlay that was designed by the Zoning Commission to preserve and enhance the low density character of the Wesley Heights area, see, 11 DCMR §§1541-1543. Properties within the Overlay are subject to more stringent restrictions than the development standards of the underlying R-1 zone.

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the exact time period or frequency of communications between appellant and the owner. However, the Board finds that, based upon appellant's own statement, there were several communications regarding the development and appellant was "repeatedly assured" that his objections would be cured (Exhibit 26, p. 4, 5).

### **Construction**

7. Construction of the new home was completed to the point where it was completely under roof no later than April, 2004 (Exhibit 20).

### **The Appeal**

8. The appeal was filed on June 24, 2005, more than 17 months after the last of the 2003 permits was issued<sup>3</sup>, and exactly 60 days after the fence permit had been issued (Exhibit 1). The appeal was filed more than one year after the dwelling structure was under roof.

9. Appellant filed a "Statement in Support of Appeal" detailing the basis of his claims (Exhibit 3). Appellant alleges that the 2003 permits violate various provisions of the Zoning Regulations, including side yard requirements (§ 405), rear yard requirements (§ 404), and restrictions of the Wesley Heights Overlay (§ 1541). Appellant also alleges that the fence permit allowed the construction of fences in violation of the seven feet height limit within the Building Code (12 DCMR 3110) (Exhibit 3).

### **The Restated Appeal**

10. On or about January 9, 2006, Appellant submitted an "Amended and Restated Statement in Support of [its] Appeal" (Exhibit 29). In his Amended Statement and during argument before the Board, Appellant cited additional violations of the Zoning Regulations, including § 2503.3. Section 2503.3 allows construction of a fence in a required open space, but only if it is "constructed in accordance with the D.C. Building Code" (Exhibit 29, p. 18). Appellant maintains that the fence permit issued by DCRA allowed fences which exceed the maximum height of seven feet under the Building Code.

11. Appellant submitted photographs of the subject property that were taken in January, 2006 (Exhibit 32). The photographs depict construction at the subject property, including various fences and "platform structures". (See, Tabs G – Q, appended to Exhibit 32). Appellant maintains that the fences are more than seven feet

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<sup>3</sup> The appeal was filed more than two years after permit B-451175 was issued on May 9, 2003, and nearly two years after permits B-452577 and B-452735 were issued on June 26, 2003, and July 1, 2003, respectively.

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tall and, in some instances, consist of a fence placed "on top of" a platform structure Exhibit 32, Tr. at 102).

12. Appellant maintains that he could not know the scope of work at the property at the time the permits were issued because he was "misled" by the owner and the construction was ongoing as of the date of the public hearing.

### **CONCLUSIONS OF LAW**

#### **Motion to Dismiss**

The owner filed a motion to dismiss the appeal on grounds that: (1) the appeal was untimely filed as to the 2003 permits; (2) the Board lacks subject matter jurisdiction as to the appeal of the fence permit because it is a challenge under the Building Code, not the Zoning Regulations; and (3) the appeal of the fence permit is without a factual basis in the Zoning Regulations because there is no provision of the WH Overlay regulations that applies to the property.

DCRA joined in the owner's motion and argues, in addition, that: (1) whether the fence permit violates height limits under the Building Code is not an issue of zoning review; and (2) with respect to the fence permit, appellant has failed to identify or state an error in the zoning review process, and relies solely on the actual fence height after construction (see, Exhibit 27).

#### **The Administrative Decision Complained Of**

Pursuant to the Zoning Act, the Board has jurisdiction to hear appeals alleging "error in any order, requirement, decision, determination, or refusal made by ... any [District] administrative officer or body in the carrying out or enforcement of" the Zoning Regulations. D.C. Official Code § 6-641.07(g)(1) (2001). Therefore, the threshold question is to identify the administrative decision (or decisions) being complained of. There is no dispute that the appeal stems from the issuance of the four permits issued in 2003 (the 2003 permits) and the fence permit that was issued in 2005. Accordingly, the appeal relates to the issuance of the five building permits.

#### **Timeliness**

The District of Columbia Court of Appeals has held that "[t]he timely filing of an appeal with the Board is mandatory and jurisdictional." *Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994).

The rules governing the timely filing of an appeal before the Board are set forth in 11 DCMR § 3112.2. Subsection 3112.2(a) provides that an appeal must be filed within sixty (60) days from the date the person filing the appeal had notice or

knowledge of the decision complained of, or reasonably should have had notice or knowledge, whichever is earlier. Section 3112.2 (b) also applies with respect to approval of the house construction. That provision states that no appeal shall be filed later than 10 days after the structure or part thereof in question is under roof.<sup>4</sup> However, § 3112.2(c) provides that notwithstanding § 3112.2(a) and (b), an appellant shall have a minimum of sixty (60) days from the date of the administrative decision complained of in which to file an appeal. Finally, § 3112.2(d) provides that the Board may extend the 60-day time limit only if the appellant demonstrates that: (1) there are exceptional circumstances that are outside the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and (2) the extension of time will not prejudice the parties to the appeal.

**The Appeal of Each of the 2003 Permits was Untimely**

With respect to each of the 2003 permits, this appeal was filed well after the 60-day time period had expired. It was filed more than 17 months after the permit issued in September, 2003, nearly two years after the permits issued in June, 2003 and July, 2003, and more than two years after the permit issued in May, 2003. It was also filed more than one year after the dwelling was under roof (see, Finding of Fact 8).

As will be explained below, the Board does not find there were exceptional circumstances beyond appellant's control which impaired his ability to file a timely appeal. Moreover, any extension of time would certainly prejudice the owner. Therefore, even if the Board were persuaded that an extension was justified, the appellant cannot make the required showing under § 3112 (d).

By his own admission, Appellant objected to the development at the site for nearly two years before filing this appeal. There is no doubt appellant engaged in discussion with the owner and his agents during this time. The owner may not have been entirely candid during these discussions, and appellant may very well have wished to avoid the difficulty and expense of prosecuting an appeal. However, even if the Board were to find that appellant was misled by the owner at some point, the scope of work at the property should have been obvious once the house was under roof during the spring of 2004. A party who chooses to engage in negotiations or other ways to resolve a dispute does not thereby extend its time for filing an appeal, see, *Waste Management v. District of Columbia Board of Zoning Adjustment*, 775

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<sup>4</sup> The subsection goes on to define "under roof" as "the stage of completion of a structure or part thereof when the main roof of the structure or part thereof, and the roofs of any structures on the main roof or part thereof, are in place".

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A.2d 1117 (D.C. 2001)<sup>5</sup>; *Woodley Park Community Ass'n v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628 (D.C. 1985). The Board need “not countenance delay in taking an appeal when it is merely convenient for an appellant to defer in making that decision.” *Waste Management, supra*.

Appellant argues that the five permits were obtained in piecemeal fashion, hindering his ability to access the scope of development until the fifth permit – the fence permit -- was issued. Appellant claims that, in this respect, the facts are similar to those in the *Sisson* case, a timely appeal that was filed long after the issuance of the initial permit, *Sisson v. District of Columbia Board of Zoning Adjustment*, 805 A.2d 964 (D.C. 2002). The Board does not find the facts in this case to be similar to *Sisson*.

In *Sisson*, the Board found that the time for filing an appeal could not be measured from the issuance of the initial permit because observers were not fairly on notice at that time regarding the scope of the entire project. Specifically, the Board found that the appellant could not access potential zoning issues such as lot occupancy until the last of five permits had been issued. In this case, the claims of violation relate to the siting of improvements and the bulk and height of those improvements, all of which were apparent to the appellant early on (Findings of Fact 5-7).

#### **The Fence Permit**

The appeal of the fence permit was timely filed. As stated in the Findings of Fact, the appeal was filed on the 60th day after the fence permit was issued (Finding of Fact 8). Thus, the issuance of the fence permit is properly before this Board.

#### **Subject Matter Jurisdiction**

The Board finds that it has subject matter jurisdiction to decide the appeal of the fence permit. The Zoning Act of 1938 provides that “[a]ppeals to the Board of Adjustment may be taken by any person aggrieved ... by any decision ... granting or refusing a building permit ... based in whole or in part upon any zoning regulation,” D.C. Official Code § 6-6-641.07 (f). As will be explained later, the relevant zoning regulation for the purposes of this appeal is 11 DCMR § 2503.3, which is an exception to the requirement of § 2503.1 “that every part of a yard required under this title shall be open and unobstructed to the sky from the ground up.” Subsection 2503.3 permits the construction of a fence in a required yard, if “constructed in accordance with the D.C. Building Code”. The parties all agree that the Building

<sup>5</sup> Appellant claims the *Waste Management* case is distinguishable from this matter because it involved the issuance of a certificate of occupancy rather than a building permit, and a challenge by a corporation rather than an individual homeowner. The Board disagrees with this reasoning.

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Code imposes a maximum fence height of 7 feet, which Appellant contends was allowed to be exceeded by DCRA.

That the Appellant was aggrieved by the grant of the fence permit is not contested. Because section 10 of the Zoning Act (D.C. Official Code § 6-641.09) prohibits the issuance of a building permit "unless the plans of and for the proposed ... construction... fully conform to the provisions of" the Zoning Regulations, and because the fence at issue was in a required yard, DCRA was obligated to determine whether the owner's plans fully conformed to § 2503.3, including the incorporated height limitation. The issuance of the permit signified DCRA determination that it did. Since the Appellant alleged he was aggrieved by the grant of a building permit, the issuance of which was based in part on the Zoning Regulations, the Board had subject matter jurisdiction to hear his appeal.

#### **Failure to State a Claim of Zoning Error**

However, the Board agrees with DCRA that appellant has not sufficiently identified a claim of zoning error. As the property is not within the WH Overlay, appellant cannot rely on violations relating to the Overlay restrictions. The only possible claim of zoning error was that DCRA issued the fence permit in violation of § 2503.3.

Yet, Appellant does not claim that DCRA improperly issued the permit. He points to no faulty plans or improper calculations, nor does he allege that the permit authorized a fence greater than 7 feet in height. In fact, the fence permit expressly limits the fence height to seven feet (Attachment A to Exhibit 27). Instead, the Appellant focuses on the actual height of the fence, as built, and argues that it exceeds 7 feet (See, Findings of Fact 9-11). However, this fact, even if established, would not constitute an error in DCRA's zoning review process. Because this is an appeal arising from the grant of a building permit, and no error with respect to that decision is alleged, the motion to dismiss the appeal as it relates to the fence permit must be granted.

#### **ANC**

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. ANC 3D voted to support the appeal, supporting the appellant's position regarding timeliness and inconsistencies with the WH Overlay. As stated in this Decision and Order, the appeal relating to the 2003 permits was untimely filed and the property is not located in the WH Overlay.

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For reasons discussed above, the Board must grant the motion to dismiss the appeal as it relates to the 2003 permits. It is hereby **ORDERED** that the motion to dismiss the appeal is **GRANTED** based upon Appellant's having untimely filed it.

Vote taken on January 10, 2006

**VOTE: 5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and John G. Parsons in support of the motion)

For reasons discussed above, the Board must grant the motion to dismiss the appeal as it relates to the fence permit. It is hereby **ORDERED** that the motion to dismiss is **GRANTED** based upon Appellant's failure to sufficiently identify a zoning review error.

**VOTE: 3-2-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr. and John A. Mann II in support of the motion; Ruthanne G. Miller and John G. Parsons in opposition to the motion)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member has approved the issuance of this Decision and Order.

**OCT 02 2006**

**FINAL DATE OF ORDER:** \_\_\_\_\_

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17436 of Althea Forrester and Howard Wilson**, pursuant to 11 DCMR § 3103, for an area variance from § 2116.2, to allow the location of a parking space in the front yard of an existing single-family row dwelling, in the R-5-B district at premise 1466 Belmont Street, N.W. (Square 2660, Lot 810).<sup>1</sup>

**HEARING DATE:** February 28, 2006

**DECISION DATE:** February 28, 2006

**DECISION AND ORDER**

This application was submitted on September 15, 2005 by Althea Forrester and Howard Wilson ("Applicants"), the owners of the property that is the subject of the application ("subject property"). The application was incorrectly advertised for a special exception under 11 DCMR § 2116.2 and for some time prior to the hearing, there was a question whether the Applicants needed an area variance or a special exception. The Department of Consumer and Regulatory Affairs ("DCRA") and the Office of Planning ("OP") treated the application as one for special exception relief. The application itself originally requested an area variance, but this was crossed out and changed to "special exception." The Applicants originally appeared to be operating under the assumption that a variance was necessary, and on September 20, 2005, they filed a statement with the Board explaining how they met the variance test. Several days prior to the hearing, the Applicants were informed that an area variance, and not a special exception, was definitely needed. At the hearing, the Board gave the Applicants the choice of proceeding at that time or of continuing the hearing to provide them with more time to prepare a variance case. The Applicants decided to proceed at that time and presented their case for a variance.

The Board held the hearing on the application on February 28, 2006 and the same day, decided to deny it, by a vote of 5-0-0.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated September 21, 2005, the Office of Zoning ("OZ") gave notice of the application to OP, the District Department

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<sup>1</sup>The application was incorrectly advertised for a special exception from § 2116.2. It was finally determined that the necessary relief was actually a variance from § 2116.2 because single-family dwellings are excepted out of the regulation under which the Board may grant special exceptions to permit the location of accessory parking spaces other than as stated in the regulations. See, 11 DCMR § 2116.5. The caption has been corrected here.



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of Transportation, Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the subject property is located, Single Member District 1B05, and the Council Member for Ward 1. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *District of Columbia Register*, and on December 8, 2005, mailed hearing notices to the ANC, the Applicants, and all owners of property within 200 feet of the subject property.

Requests for Party Status. There were no requests for party status.

Applicants' Case. The Applicants testified to their need for the front yard parking pad and explained how, in their opinion, they met the variance test. They did not present any witnesses.

Government Reports. The Office of Planning submitted a report to the Board dated February 28, 2006, recommending denial of the requested special exception. OP opined that both the curb cut leading to the front yard parking pad and the front yard parking itself would be inconsistent with the intent of the Zoning Regulations and would have an adverse impact on the character of the street.

ANC Report. ANC 1B submitted a report to the Board dated February 4, 2006, recommending denial of the requested special exception, stating that both curb cuts and front yard parking are discouraged by the ANC because of safety concerns and the loss of public curbside parking.

## FINDINGS OF FACT

1. The subject property is located at address 1466 Belmont Street, N.W. (Square 2660, Lot 0810), in an R-5-B zone district.
2. The property is a regular rectangle comprising 3,400 square feet and has no significant unusual features.
3. The property is improved with a three-story with basement single-family interior row dwelling.
4. The subject dwelling was constructed circa 1920; therefore there is no requirement in the Zoning Regulations that an off-street parking space be provided for it. *See*, 11 DCMR § 2100.1.
5. Whether or not an off-street parking space is required, if one is provided, it may only be located in one of the areas set forth in 11 DCMR § 2116.2. These areas do not include the front yard.

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6. Other than the area between the street and the dwelling, *i.e.*, the "front yard," there is no area on the subject property suitable for a parking space because there is no alley behind the property and therefore no access to the rear of the property for parking purposes.
7. None of the other dwellings on the same side of the block as the Applicants have rear access, except one; the owners of that property purchased adjacent land to secure such access.
8. The Applicants propose to put a parking pad in front of the dwelling, with a curb cut on Belmont Street to permit access to it.
9. The parking pad is proposed to enable the Applicants' elderly relatives to park in front of the subject property when they come to visit.
10. There are 3 curb cuts now on the 1400 block of Belmont Street. Two of these curb cuts are for multi-unit residential developments and both of them lead to underground parking. The third curb cut is in front of one of the dwellings adjacent to the subject property. It leads to a sloped driveway and a below-grade garage, all of which appear to have been constructed prior to the enactment of the Zoning Regulations.
11. The proposed curb cut raises safety concerns because of the dense residential development on the block and the accompanying pedestrian use of the sidewalk in front of the subject property.
12. A curb cut in front of the subject property would remove an on-street parking space which is currently available for public use.
13. Parking on Belmont Street is difficult under the current circumstances, but not impossible.
14. Front yard parking, particularly in a residential area, is generally aesthetically unappealing.
15. The Zoning Regulations generally disfavor the location of a parking space in front of a residential use. *See, e.g.*, 11 DCMR § 2116.2(b)(2) & (3). (Off-street parking spaces generally restricted to a side or rear yard, unless accessory to a "commercial or industrial use.")

## CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning

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Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property ..." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The "exceptional situation or condition" of a property can arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2.

The Applicant seeks a variance from the provisions of 11 DCMR § 2116.2 (b), which provides that "Parking spaces shall be located ... [o]n an open area of the lot as follows: (1) [w]ithin a rear yard; (2) [w]ithin a side yard; or (3) ... elsewhere on the lot if accessory to a commercial or industrial use."

The subject property is not a commercial or industrial use. Therefore parking spaces may only be located in the rear or side yard, not the front yard.

An applicant for area variances must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicants in this case, therefore, had to make three showings: exceptional condition of the property, that such exceptional condition results in "practical difficulties" to the Applicants, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

This application fails to meet the variance test. The subject property has no extraordinary or exceptional condition resulting in any practical difficulty in meeting the Zoning Regulations. It is a regularly-shaped rectangle with no significant unusual feature. Belmont Street is steeply inclined, but this incline affects the entire area, and is not unique to the Applicants' property. The subject property is in a residential zone, surrounded by other residential uses, and although it is not served by a rear alley, neither are the other dwellings on the block. The property fronts on Belmont Street, and street parking, though sometimes difficult to come by, is available. While Applicants assert that they have a practical difficulty - that being the difficulty of their elderly relatives in parking close to their house - in order to avoid walking up or down Belmont Street, with its steep incline - that difficulty does not arise out of any exceptional condition of the property, but rather out of one shared by the neighborhood. The Board notes that OP

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indicated at the hearing that there are other options available to the Applicants to assist their elderly relatives with parking which would not require zoning relief.

Because an applicant for a variance must meet all three prongs of the variance test, and the applicants in this case have not met the first two, the Board need not determine whether granting the variance would result in a substantial detriment to the public good or a substantial impairment of the intent, purpose, and integrity of the Zoning Regulations. However, the Board does find that a curb cut would result in the loss of a street parking space and would potentially cause conflict with pedestrian traffic on the sidewalk. Further, because Applicants' property is not unique in any way from that of the other single family dwellings in the neighborhood, those neighbors would be entitled to the same relief, and the zoning regulation prohibiting the front yard parking would thereby be undermined. Accordingly, granting a variance in this case would result in the substantial impairment of the intent and integrity of the Regulations.<sup>2</sup>

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. Both OP and ANC 1B recommended denial of the special exception originally requested in this application. At the hearing, the OP representative stated that the special exception test is less stringent than the variance test. Accordingly, OP also recommended denial of the variance. The Board agrees with the recommendations made by OP and the ANC.

For the reasons stated above, the Board concludes that the Applicants failed to satisfy the burden of proof with respect to an application for an area variance from § 2116.2, to allow a front-yard parking space. Accordingly, it is therefore **ORDERED** that the application be **DENIED**.

**VOTE:**      **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr.,

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<sup>2</sup> Compare BZA Order No. 17477 of Lillian K H Audette Revocable Trust, in which this Board granted a variance for front yard parking. In that case the Board found that the applicant's property was unique as the only single family dwelling on the block without parking and unusually located near a myriad of commercial uses; that such uniqueness resulted in applicant suffering greater practical difficulty in parking than its neighbors; and that no public detriment resulted from granting the variance because additional parking was being created on the block as a result of the applicant's providing two parking spaces on site while removing only one street parking space with the curb cut. Finally, the Board also found that the parking pad would not undermine the residential character of the neighborhood because of the property's close proximity to a commercial area.

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John A. Mann II and Gregory N. Jeffries to deny.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring Board member approved the issuance of this order.

**FINAL DATE OF ORDER: OCT 12 2006**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17495 of Douglas George Jefferies**, pursuant to 11 DCMR § 3102.2, for a variance from the penthouse set-back provisions under subsection 400.7(b), a variance from the lot area requirements under section 401, a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, a variance from the side yard requirements under section 405, a variance from the open court requirements under section 406, a variance from the nonconforming structure provisions under subsection 2001.3, and a variance from the alley structure height provisions under subsection 2507.4, to allow the conversion of two existing single-family dwellings into one single-family dwelling in the R-3 District at premises 1520 22<sup>nd</sup> Street, N.W. and 2210 Q Street, N.W. (Square 2510, Lots 806 and 813).

**Note:** The Board revised the application by removing the request for variance relief from §2507.2, the alley width provisions. The Board determined that relief from this provision was unnecessary.

**HEARING DATE:** July 18, 2006  
**DECISION DATE:** July 18, 2006 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2D, which is automatically a party to this application. ANC 2D submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of most of the variances requested in the application. However, OP recommended denial of the variances from the height, rear yard and side yard requirements.

OP opined that the additional 8 feet of height requested over the maximum height permitted in the zone district would be detrimental to the Zone Plan because the height limitation for alley structures is designed to keep them lower than the structures that front on the streets. OP noted that the existing adjacent buildings already have second floor additions and to add a third story will be unusual for alley dwellings. Finally, on this

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point, OP stated that "The additional height, combined with the setback relief results in a building mass which is larger [than] that anticipated for alley dwellings." In OP's view, the application failed to demonstrate a hardship with regard to the height variance.

The Board is authorized to grant a variance from the strict application of the Zoning Regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." *Id.*

In examining the evidence of record, the Board determined that there are a number of factors that are unique to the property. These include the buildings' status as historic structures on an alley and the setback limitations placed on the construction by the Historic Preservation Review Board.

In assessing the second prong of the variance test, the Board gave great weight to the opinion of OP, and carefully considered and addressed its views in this regard. However, the Board determined that OP applied the wrong standard in reviewing the application. It is the "practical difficulty" standard, rather than the "hardship" standard that applies in area variance applications. The Board noted several practical difficulties in complying with the regulations that arose out of the uniqueness of the property.

The Board noted the ramifications of designing a building within the height limitations. To do so, the floors of one of the existing buildings would need to be reduced, everything would need to be reframed and a flat roof created, resulting in a structure that would be more architecturally out of character with the surrounding neighborhood and the existing house.

The Board noted that even with the third floor addition, the structure would not be as tall as other nearby structures. Furthermore, the addition would not be visible from the street.

The Board determined that it would be a practical difficulty for the applicant to reduce the height by not constructing the two-car garage for parking. Without the garage, the applicant would need to park in the alley; with the garage, he can park on the subject property. Also, the Board noted that if the garage with the extra level above is not built, the appraisal might be inadequate for the applicant to secure a loan.

With regard to the elevator, the Board concluded that the HPRB's setback recommendation placed a dimensional constraint on the location of the elevator unit, requiring the applicant to relocate the penthouse. Therefore, due to historic preservation concerns, the elevator cannot be placed where it would normally be located, necessitating the variance from the roof structure setback provisions.

The Board concludes that a confluence of these exceptional circumstances creates practical difficulties for the applicant in his efforts to renovate the properties in compliance with the Zoning Regulations. Further, the Board finds that variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. While OP was of the view that a taller structure would be out of character with other alley dwellings in general, there are no other alley dwellings on this alley. The building on this property will not be out of character with the taller buildings behind it.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3102.2, for variances from §§ 2001, 401, 404, 405, 403, 406, 400 and 2507. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proof under 11 DCMR §§ 3103.2, (2001, 401, 404, 405, 403, 406, 400 and 2507) that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the applicant in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

**VOTE:**        **4-0-1**        (Curtis L. Etherly, Jr., Ruthanne G. Miller, Geoffrey H. Griffis and John A. Mann II to grant; Carol J. Mitten not present, not voting)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.



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FINAL DATE OF ORDER: OCT 05 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

TWR

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17505 of Trammel Crow Company**, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under section 411, a special exception for a partial waiver of the rear yard requirements under subsections 774.2 and 774.9(c) and a special exception for a reduction in the number of parking spaces under section 2108; and pursuant to 11 DCMR § 3103.2, a variance from the court width requirements under section 776, to allow the construction of a hotel in the C-3-C District at premises 201 Florida Avenue, N.E. (Square E-710, Lot 810).

**Note:** The original application was amended to request the special exception for a reduction in the number of parking spaces under section 2108.

**HEARING DATE:** July 25, 2006

**DECISION DATE:** July 25, 2006 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions under sections 411, 774 and 2108. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411, 774 and 2108, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to

affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board and having given great weight to the ANC and the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 (776) that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

**VOTE:**      **4-0-1** (Curtis L. Etherly, Jr., Ruthanne G. Miller, John A. Mann II and Michael G. Turnbull to approve; Geoffrey H. Griffis not present, not voting)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** JUL 31 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

TWR

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No 17510 of Bertha Tucker**, pursuant to 11 DCMR § 3104.1, for a special exception to establish a child development center (60 children and 10 staff) under section 205, at premises 3219 9<sup>th</sup> Place, S.E. (Square 5942, Lot 824).

**HEARING DATE:** September 19, 2006

**DECISION DATE:** October 3, 2006

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 8E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8E, which is automatically a party to this application. ANC 8E submitted a report that did not indicate the quorum and number of commissioners voting in support, therefore the report was not entitled to great weight. However, the Board recognizes and acknowledges the support of the ANC in this case. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 205. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 205, that the requested relief can be granted being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**, **SUBJECT to the following CONDITIONS:**

1. Approval shall be for **FIVE YEARS** from the date of issuance of the Certificate of Occupancy.
2. The number of children on-site at any one time shall not exceed 34 based on the following breakdown: 13 infants; 13 children two- to four-years old; eight after-school.
3. The number of staff on-site at any one time shall not exceed eight.
4. The hours of operation shall be 7 a.m. to 6 p.m., Monday through Friday.
5. The Applicant shall provide two 9' by 19' parking spaces on the site.
6. The Applicant shall follow a pick up/drop off plan in accordance with the description set forth at Exhibit 28 of the record.

**VOTE:**      **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr. and John A. Mann II to approve; No Zoning Commission Member participating)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** **OCT 12 2006**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE

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APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

TWR

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17512 of KC Enterprises**, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements under section 401, and a variance from the side yard requirements under section 405, to construct a new semi-detached dwelling in the R-2 District at premises east side of the 300 block of 58th Street, N.E. (Square 5264, Lot 22).

**HEARING DATE:** September 19, 2006

**DECISION DATE:** October 3, 2006

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7C, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 7C. The full ANC did not participate in the application. The

ANC

single member district Commissioner for 7C-05 submitted a letter in opposition to the application. The OP submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2, 401 and 405. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 401 and 405, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.



Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

**VOTE:** 3-2-0 (John A. Mann II, Curtis L. Etherly, Jr. and Geoffrey H. Griffis to approve; Ruthanne G. Miller and Anthony J. Hood opposed to the motion).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring Board member has approved the issuance of this order.

**FINAL DATE OF ORDER:** October 4, 2006

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE,

COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17517 of Charles B. Jackson**, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a four (4) unit apartment building under section 353, in the R-5-A District at premises 4925 Call Place, S.E. (Square 5337, Lot 7).

**HEARING DATE:** October 10, 2006  
**DECISION DATE:** October, 10, 2006 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. ANC 7E did not participate in this application. However, the Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 353. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

OCT 20 2006

**VOTE:**       **5-0-0**           (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann II,  
Ruthanne G. Miller and Gregory N. Jeffries to approve)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:**       **OCT 11 2006**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON

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ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

TWR

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17518 of Bruce Schillo and Jennifer Boulanger**, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a two-story rear addition to a single-family row dwelling under section 223, not meeting the open court requirements (section 406) in the R-4 District at premises 643 South Carolina Avenue, S.E. (Square 876, Lot 64 (old Lot 824)).

**HEARING DATE:** October 3, 2006

**DECISION DATE:** October 3, 2006 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by

findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

**VOTE:** 5-0-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, Gregory N. Jeffries and John A. Mann II to approve).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** OCT 04 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT.

OCT 2 0 2006

DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17523 of WB/BP 101 K Street LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the parking requirements under subsection 2101.1, and a variance from the loading requirements under subsection 2201.1, for a special exception from the rear yard requirements under section 774, and a special exception from the roof structure setback and wall of equal height requirements under sections 411 and 770.6, to allow the construction of an office building with ground floor retail use in the C-3-C District at premises 101 K Street, N.E. (Square 715, Lot 11).**

**SUMMARY ORDER**

**HEARING DATE:** October 10, 2006  
**DECISION DATE:** October 10, 2006 (Bench Decision)

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted a letter in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions under sections 411, 770.6 and 774, and variances pursuant to § 3103.2 from the requirements of sections 2101.1 and 2201.1. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411, 770.6 and 774, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning

Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board, the Board further concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 2101.1 and 2201.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

**VOTE:**        5-0-0        (Geoffrey H. Griffis, Gregory N. Jeffries, Curtis L. Etherly, Jr., Ruthanne G. Miller and John A. Mann II, to Approve).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** October 12, 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR

ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17531 of D.C. Office of Aging**, pursuant to 11 DCMR §3104.1, for a special exception to allow an addition to and use of a former public school building (the former Hayes Elementary School) to house the headquarter offices of the D.C. Office of Aging under section 222, and a special exception to allow a senior wellness center under section 205, in the R-4 District at premises 1005 5<sup>th</sup> Street, N.E. (Square 830, Lot 816).

**HEARING DATE:** October 3, 2006  
**DECISION DATE:** October 3, 2006 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The former public school building has been designated an historic landmark and therefore is exempt from parking requirements pursuant to 11 DCMR. §2100.5. Applicant is none-the-less providing a 25-space parking lot at the rear and to the east of the building to accommodate the reasonable needs of staff, program participants and other visitors.

The senior wellness center will operate from 9 a.m. to 3 p.m.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to Advisory Neighborhood Commission (ANC) 6C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under sections 222 and 205. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 222 and 205, that the requested relief can be granted being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board

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further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**, in accordance with the plans presented, except that Applicant shall have flexibility as it relates to the landscaping of the site.

**VOTE:**       **5-0-0**       (Curtis L. Etherly, Jr., John A. Mann II, Geoffrey H. Griffis,  
Ruthanne G. Miller and Gregory N. Jeffries to approve)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:**   **OCT 11 2006**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT

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DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

TWR

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